



2025 REGISTRAR AGREEMENT

[Insert Registrar name]

.au Domain Administration Limited

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Date 1 January 2025

Parties

.au Domain Administration Limited (ACN 079 009 340) of Level 19, 8 Exhibition Street, Melbourne VIC 3000, Australia (**auDA**)

The person described in Item 1 of Schedule 1 (**Registrar**)

Background

- A. auDA is a not-for-profit organisation, limited by guarantee, established as the administrator of, and the Australian self-regulatory policy for, the .au country code Top Level Domain (ccTLD) and its associated second level domains.
- B. auDA's purpose is to administer a trusted .au ccTLD for the benefit of all Australians, and champion an open, free, secure and global Internet. auDA's vision is to unlock positive social and economic value for Australians through an open, free, secure and global Internet.
- C. auDA has an agreement with ICANN to manage the .au ccTLD on behalf of the Australian Internet community. The agreement requires auDA to cause the authoritative primary and secondary nameservers for the .au ccTLD to be operated and maintained in a stable and secure manner, adequate to resolve names within the .au ccTLD, and any sub-domains over which auDA retains administrative authority, for users throughout the Internet.
- D. The .au DNS is part of Australia's critical infrastructure, and is specified as a *critical domain name system* under the SOCI Act. Under the SOCI Act the following assets have been declared critical infrastructure assets:
 - (a) registry database;
 - (b) public WHOIS service (<https://whois.auDA.org.au/>);
 - (c) .au top-level authoritative DNS name servers; and
 - (d) the following second-level authoritative DNS name servers: com.au, net.au, org.au, asn.au, id.au, edu.au and gov.au.
- E. Under the Competition Model for the .au Domain Space, developed by the multi-stakeholder Competition Model Advisory Panel in 2001, auDA maintains a separation from domain name registry or registrar operations.
- F. auDA appointed Identity Digital Australia Pty Ltd as the Registry Operator under the Registry Services Agreement dated 22 August 2023. The Registrar has entered or will enter into a Registry-Registrar Agreement with the Registry Operator under which the Registry Operator will provide specified Registry Services to the Registrar.
- G. auDA is committed to exercising its responsibilities to the Registrar and the Australian public in an open and transparent manner, and to apply standards and policies in a way which are not arbitrary, unjust or inequitable.
- H. The parties wish to document the terms on which the Registrar will provide Registrar Services and access the Registry on and from the date of this Agreement in respect of the .au ccTLD and all other Designated Namespaces.

1. Definitions and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter which is defined in Schedule 5 (**Dictionary and Interpretation**) has the meaning given to it in the Dictionary.

1.2 Interpretation

Section 2 of Schedule 5 (**Dictionary and Interpretation**) sets out rules of interpretation for this Agreement.

2. Registrar registered in Australia and meets Special Licensing Terms

2.1 Australian incorporated or registered entity

- (a) The Registrar must be at the Commencement Date, and continue to be during the Term, an Australian incorporated entity or otherwise registered to carry on business in Australia in accordance with the applicable Laws.
- (b) The Registrar warrants and represents that:
 - (i) if it is an Australian company, it will hold an Australian Company Number (**ACN**) and an Australian Business Number (**ABN**); or
 - (ii) if it is a non-Australian domiciled company, it will hold an Australian Registered Body Number (**ARB**N) and an ABN, and must have an Australian address for service of notices for the purposes of this Agreement.
- (c) The Registrar must be registered with the Australian Taxation Office (**ATO**) for Goods and Services Tax (**GST**).

2.2 Special Licensing Terms

If there are any Special Licensing Terms that apply to the Registrar, the Registrar hereby warrants and represents that as at the Commencement Date and on each day during the Term, it will be able to meet the requirements, and comply with the relevant provisions of such Special Licensing Terms.

3. Australian Government Endorsement and ICANN obligations

3.1 Endorsement and recognition

The Registrar acknowledges that by virtue of the Australian Government Endorsement and the ICANN Sponsorship Agreement, auDA is endorsed and recognised as the holder of the delegation of authority by ICANN for administrative authority of the .au ccTLD (**Endorsement and Delegation**).

3.2 Endorsement is not property

The parties acknowledge and agree that the Endorsement and Delegation is the exercise of public rights and are not items of property and cannot be assigned, except by the Australian Government and ICANN.

3.3 Performance of obligations

Without limiting any other provision of this Agreement, the Registrar must perform its obligations under this Agreement in a manner that ensures auDA can comply with its obligations under the Australian Government Endorsement and ICANN Sponsorship Agreement, including in a manner that:

- (a) ensures the stable, secure and reliable operation of the DNS and .au ccTLD, including its integrity and resilience;
- (b) promotes consumer protection, fair trading and competition; and
- (c) promotes the timely resolution of disputes and complaints in respect of the DNS.

3.4 Agreement subject to endorsement and delegation

- (a) Subject to clause 32.7, the parties acknowledge and agree that auDA's rights under this Agreement are subject to Endorsement and Delegation, and auDA may immediately terminate this Agreement by providing written notice if the:
 - (i) Australian Government Endorsement is revoked or terminated for any reason; or
 - (ii) ICANN Sponsorship Agreement is terminated and is not succeeded or replaced by a new .au delegation or sponsorship agreement between auDA and ICANN.
- (b) If this Agreement is terminated under clause 3.4(a), the Registrar acknowledges that auDA will not be liable for any Claim, cost, Loss, expense or Liability, (whether direct, indirect or consequential) that the Registrar (or any Registrant) may suffer, sustain or incur as a result of such termination, unless that termination has directly resulted from auDA engaging in conduct in bad faith and in egregious breach of the Australian Government Endorsement and ICANN Sponsorship Agreement.

4. Term

4.1 Initial Term

This Agreement commences on the Commencement Date, and unless otherwise extended or terminated in accordance with its terms, expires on the Initial Expiration Date.

4.2 Further Term

auDA may extend this Agreement for a further term of 2 years (**Further Term**), by giving the Registrar no less than 90 Days' notice in writing prior to the Initial Expiration Date.

5. Registrar Services

5.1 Delivery of Registrar Services

- (a) The Registrar must provide the Registrar Services:
 - (i) in accordance with the terms of this Agreement, including any terms and conditions imposed on its auDA Accreditation;
 - (ii) with all due care, skill and diligence;

- (iii) in a timely, efficient and professional manner;
 - (iv) in accordance with all applicable Laws; and
 - (v) employing techniques generally employed in the industry (to the extent that such techniques do not otherwise derogate from its obligations under clauses 5.1(a)(i) to 5.1(a)(v)).
- (b) The Registrar must not submit a Licence Application to the Registry under clause 6 if the Licence Application does not comply with the relevant terms of this Agreement.

5.2 Compliance with Published Policies

- (a) Without limiting clause 5.1(a) but subject to clause 5.2(b), the Registrar must comply with all Published Policies, as if they were incorporated into, and form a part of, this Agreement.
- (b) If at any time during the Term auDA:
- (i) introduces new Published Policies; or
 - (ii) makes changes to any existing Published Policy,
- then the Registrar must comply with those new or changed Published Policies as soon as practicable, but in any event within 30 Days after auDA notifies the Registrar of the existence of the new or changed Published Policies.
- (c) auDA may notify the Registrar of the new or changed Published Policies by:
- (i) following the procedures described in clause 34; or
 - (ii) posting the new or changed Published Policies on the auDA Website.

5.3 Inconsistencies

In the event of any inconsistency between the provisions of this Agreement and the terms of any Published Policies, then to the extent of the inconsistency, the documents will be interpreted in the following order of priority:

- (a) the Published Policies (highest level of priority), and in respect of inconsistent Published Policies, in the following order:
- (i) Licensing Rules;
 - (ii) Registrar Rules;
 - (iii) all other Published Policies;
- (b) this Agreement.

5.4 No limitation

Subject to clause 5.3, nothing in this clause limits or otherwise affects the Registrar's obligations as provided elsewhere in this Agreement.

6. Applications for Licences

6.1 Consideration by Registrar

- (a) On receipt of a Licence Application, the Registrar must:
 - (i) consider whether the Licence Application complies with the relevant provisions of this Agreement and relevant Published Policies; and
 - (ii) validate the Information provided to the Registrar in the relevant Licence Application.
- (b) For the purposes of this clause 6.1, before submitting any Licence Application to the Registry Operator, the Registrar must (among other things) satisfy itself that:
 - (i) the identity of the Registrant has been validated using the sources set out in clause 6.1(c);
 - (ii) the Registrant has a legitimate Australian Presence; and
 - (iii) the Registrant satisfies all applicable eligibility and domain name allocation rules for the relevant Designated Namespace.
- (c) The Registrar must have in place the appropriate systems and processes to enable it to validate the identity of a Registrant and confirm their Australian Presence using:
 - (i) Reliable and Independent Electronic Data; or
 - (ii) valid identity documents that auDA has nominated and specified in the Registrar Rules as valid for the purposes of this clause.
- (d) If a Registrar has validated the identity of a Registrant who is a natural person and confirmed their Australian Presence on or after the Commencement Date in accordance with the validation process set out in clauses 6.1(b)(i) and 6.1(c)(ii), then unless otherwise required under this Agreement or the Published Policies, the Registrar is not required to undertake the validation process in clauses 6.1(b)(i) and 6.1(c)(ii) again for that Registrant in respect of any subsequent Licence Applications during the Term.
- (e) Subject to clauses 6.1(f) and 6.1(g), the Registrar may determine, acting reasonably, which of the sources of Reliable and Independent Electronic Data it will use for the purposes of clause 6.1(b) and 6.1(c)(i), provided the Registrar has satisfied itself, acting reasonably, that, having regard to the following factors, such Reliable and Independent Electronic Data is appropriate for the purposes of this Agreement:
 - (i) the accuracy of the Information provided to or accessed by the Registrar;
 - (ii) the database's security policies and procedures in place with respect to the Information provided to or accessed by the Registrar;
 - (iii) the content of the Information provided to or accessed by the Registrar, including the comprehensiveness of such Information;
 - (iv) whether the Information has been verified from a reliable and independent source;
 - (v) whether the Information is maintained by a government body or pursuant to legislation; and
 - (vi) whether the Information can be additionally authenticated by any other source.

- (f) Despite clause 6.1(c), auDA may specify the Reliable and Independent Electronic Data, or particular identity documents, that the Registrar is required to use in undertaking the processes required by clauses 6.1(b) and 6.1(c) in respect of any particular Designated Namespace(s).
- (g) If auDA nominates specific data sources as Reliable and Independent Electronic Data or identity documents for a particular Designated Namespace pursuant to clause 6.1(f), then the Registrar must use only those data sources or identity documents in undertaking the validation process as set out in clauses 6.1(b) and 6.1(c) to the extent a relevant Licence Application relates to the Designated Namespace.

6.2 Validation Plan

- (a) Without limiting clause 6.1, the Registrar must prepare and send to auDA for approval, within 6 months following the Commencement Date, a Validation Plan that sets out the Registrar's processes and procedures to validate the identity and Australian Presence of a Registrant, including the specific Reliable and Independent Electronic Data or identity documents that will be used by the Registrar for those purposes, in respect of the validation process set out in clause 6.1, for the Term.
- (b) auDA will, within a reasonable period of time (not to exceed 30 Days), review the Validation Plan and either notify the Registrar in writing that the Validation Plan is approved, or of any changes to the Validation Plan that are required by auDA.
- (c) The Registrar must make any changes to the Validation Plan that are required by auDA under clause 6.2(b) within 7 Days of receipt of auDA's written notification requiring such changes, and submit the updated Validation Plan to auDA for approval.
- (d) If auDA does not approve the Validation Plan (or any updated Validation Plan pursuant to clause 6.2(f)(iii)) following the process in clauses 6.2(a) to 6.2(c) due to the Registrar failing to take the necessary steps to change the Validation Plan as required by auDA under clauses 6.2(b) and 6.2(c), auDA may suspend the Registrar's access to the Registry (or any part of it) in accordance with clause 12.1(e).
- (e) The Registrar must implement and maintain the Validation Plan once it is approved in writing by auDA.
- (f) Once the Validation Plan is approved by auDA, the Registrar must:
 - (i) comply with the Validation Plan at all times during the Term;
 - (ii) only alter the Validation Plan if required under clause 6.2(f)(iii);
 - (iii) update the Validation Plan within 14 Days of any change to any data source used by the Registrar to undertake the validation process set out in clause 6.1 (such as a database or service being used by the Registrar no longer being available), and provide the updated Validation Plan to auDA within 14 Days of making such change for auDA to review in accordance with the process set out in clauses 6.2(b) and 6.2(c); and
 - (iv) ensure that the Validation Plan is promptly implemented, continuously maintained, and made available to auDA for inspection on auDA's request.

6.3 Assessment of Licence Applications

If the Registrar:

- (a) is satisfied that a Licence Application complies with this Agreement then the Registrar must:

- (i) approve the Licence Application (**Approved Application**); and
 - (ii) enter into a Licence Agreement as contemplated by clause 6.4; or
- (b) is not satisfied that a Licence Application complies with this Agreement, the Registrar must:
- (i) reject the Licence Application (**Rejected Application**); and
 - (ii) not enter into a Licence Agreement with the relevant Registrant in respect of the Domain Name set out in the applicable Licence Application and notify the relevant Registrant of the Rejected Application as contemplated by clause 6.6.

6.4 Approved Licence Applications

The Registrar must, in relation to each Approved Application:

- (a) ensure that the Registrant enters into, and is bound, by a Licence Agreement in respect of the Approved Application; and
- (b) submit the Registrant Data relevant to the Approved Application to the Registry in accordance with clause 8.

6.5 Final check by Registry Operator

The Registrar acknowledges that even if it has approved an Approved Application, the Approved Application may still be rejected by the Registry Operator following its completion of final security and integrity checks.

6.6 Rejected Applications

The Registrar must, for each Rejected Application, notify the Registrant that the Rejected Application has been rejected.

6.7 Certificate of registration

Once Registrant Data from an Approved Application is accepted by the Registry and the Registry Operator, or placed in the Registry, the Registrar must issue a certificate (in a form prescribed or otherwise approved by auDA) that confirms that a Licence has been issued to the successful Registrant.

7. Licence Agreements

7.1 Licence Agreement

The Registrar must:

- (a) enter into a binding and enforceable Licence Agreement with each Registrant to whom it provides Registrar Services in respect of an Approved Application;
- (b) comply with the terms of each Licence Agreement; and
- (c) use reasonable endeavours to ensure that each Registrant complies with the terms of its Licence Agreement.

7.2 Mandatory Licence Agreements provisions

Each Licence Agreement must:

- (a) be consistent with the terms of this Agreement and each Published Policy;
- (b) include the provisions set out in Schedule 2;
- (c) comply with all applicable Laws (including the terms of any Published Policy that are relevant to a Registrant);
- (d) include, in a prominent location, a summary of the main provisions which are relevant to the Registrant with a view to ensuring compliance with, and no derogation from, the unfair contract terms regime in the Australian Consumer Law.

7.3 Make information available to Registrant

The Registrar must, at auDA's direction, inform its Registrants by email about new or changed Published Policies relating to the Licensing Rules or Registrar Services.

7.4 Enforcement for the benefit of auDA

The parties acknowledge and agree that:

- (a) the Registrar, in performing the Registrar Services in accordance with a Licence Agreement, holds all rights, benefits, duties and obligations under such Licence Agreement (**Licence Agreement Rights**) on its own behalf, and for the benefit of, auDA; and
- (b) auDA may direct the Registrar to enforce any Licence Agreement Right on auDA's behalf, and for auDA's benefit, notwithstanding that auDA is not party to the Licence Agreement.

For the purposes of the enforcement rights contemplated by clause 7.4(b), the Registrar agrees that any obligation corresponding to the Licence Agreement Rights is taken to be owed directly by the relevant Registrant to auDA.

8. Registry Data and Registrant Data

8.1 Data to be submitted to Registry

For each Approved Application, the Registrar must promptly submit to the Registry Operator, or update the Registry Data operated by the Registry Operator, all mandatory information required under the Registry Access Protocol from time to time.

8.2 Updated Registrant Data

The Registrar must, within 2 Days of receiving updated Registrant Data from a Registrant or auDA, update the Registry with such updated Registrant Data.

8.3 Access to Registry Data and Registrant Data

The Registrar:

- (a) must not sell, transfer or otherwise grant an interest in or access to any Registry Data or Registrant Data to any person unless:
 - (i) authorised in writing by auDA prior to that access being provided;
 - (ii) in compliance with any conditions of use specified by auDA; and
 - (iii) required to comply with any Published Policies or applicable Laws.

- (b) must take all reasonable and prudent actions to preserve the confidentiality and security of all Registry Data and Registrant Data at all times both during and after the Term.

8.4 Information to be publicly available

At all times during the Term the Registrar must ensure that the following information is publicly available, and easily accessible to the public (including on its website):

- (a) the terms and conditions of its standard form Licence Agreement;
- (b) subject to clause 27.4, the auDA Logo; and
- (c) a link to the auDA Website homepage.

9. Transfer of Licence Agreements between Registrars

9.1 Transfers

The Registrar must ensure that a Registrant may, freely and without any restriction, transfer or novate any Licence Agreement for which it has been granted a Licence to another registrar in accordance with, and subject to, any requirements and conditions set out in the Licensing Rules and other Published Policies.

9.2 Acknowledgement

The Registrar must not charge any fee to a Registrant (or any other person) for the transfer or novation of a Licence Agreement or Licence under clause 9.1.

10. Registrar's accreditation

10.1 Requirement for auDA Accreditation

- (a) The Registrar must be auDA Accredited at all times during the Term.
- (b) For clarity:
 - (i) the Registrar is not auDA Accredited merely by virtue of entering into this Agreement; and
 - (ii) auDA will issue an Accreditation Certificate and the Registrar will be auDA Accredited, if the Registrar satisfies the Accreditation Criteria.

10.2 Requirement to be Registry Operator Accredited

The Registrar acknowledges and agrees that without limiting clause 10.1, at all times during the Term it must be Registry Operator Accredited in order to provide Registrar Services and access the Registry and Registry Data.

10.3 Registrar Service

In being auDA Accredited, the Registrar may, at auDA's discretion and subject to this Agreement:

- (a) be appointed to operate as a registrar of the .au ccTLD and Designated Namespaces; and
- (b) provide Registrar Services for the .au ccTLD and Designated Namespaces.

10.4 Non-exclusivity

The Registrar acknowledges and agrees that its appointment as a registrar under this Agreement is non-exclusive and there is no limit to the number of registrars which auDA may accredit or appoint at any time during the Term in respect of the .au ccTLD or any Designated Namespaces.

10.5 Warranties

The Registrar warrants and represents to auDA that:

- (a) on the Commencement Date, it satisfies the Accreditation Criteria; and
- (b) as a continuing warranty, at all times during the Term, it will continue to satisfy all of the Accreditation Criteria.

10.6 Continuous disclosure

The Registrar must promptly notify auDA if the Registrar becomes aware:

- (a) that it does not, or is likely not to, satisfy the Accreditation Criteria or any part of it; or
- (b) of any circumstance, fact or matter that affects its ability to continue to satisfy the Accreditation Criteria.

10.7 Acknowledgments

The Registrar acknowledges that:

- (a) the Registry Operator may begin accepting or processing Licence Applications by the Registrar on and from the Commencement Date; and
- (b) auDA may post on the auDA Website, the Registrar's name and contact information, and a link to the Registrar's web site and the Registrar must ensure that it keeps auDA immediately informed of any updates to, or changes in, such information.

10.8 Audit

auDA may assess and audit the Registrar's compliance with the accreditation requirements set out in this clause 10 in accordance with the provisions of clause 16.

10.9 Loss of auDA Accreditation and access

Despite any other provision of this Agreement, the Registrar's auDA Accreditation and entitlement to access the Registry and Registry Data is automatically revoked in full upon expiry or earlier termination of this Agreement.

10.10 auDA may revoke auDA Accreditation

Without limiting clause 11.9 or any other clause under this Agreement, auDA may revoke the Registrar's auDA Accreditation if it considers that the Registrar:

- (a) fails, or is likely to fail, to satisfy the Accreditation Criteria (in whole or in part) at any time during the Term;
- (b) fails, or is likely to fail, to be Registry Operator Accredited, in whole or in part, at any time during the Term; or

- (c) commits a breach of this Agreement in relation to its access, use or dealing with the Registry or the Registry Data, whether or not an Event of Default has occurred or a Default Notice has been issued.

10.11 Consequences of loss of auDA Accreditation

- (a) If the Registrar's auDA Accreditation is revoked under the terms of this Agreement as a result of an Event of Default, the Registrar must not apply to auDA to become auDA Accredited from the date of such termination for a period of up to 12 months, as determined by auDA acting reasonably and as notified to the Registrar.
- (b) auDA may, at its sole discretion, waive the restriction in clause 10.11(a).
- (c) For clarity, in this Agreement and in the Published Policies, a reference to the termination of this Agreement includes a reference to the revocation of a registrar's auDA Accreditation.

11. Access to the Registry

11.1 No automatic access

- (a) The Registrar acknowledges and agrees that entry into this Agreement does not give the Registrar an automatic entitlement to access the Registry.
- (b) On or after the Commencement Date, the Registrar must apply to the Registry Operator to be granted access to the Registry.
- (c) If for any reason the Registry Operator fails or refuses to grant the Registrar with access to the Registry, then auDA may, acting reasonably, terminate this Agreement with immediate effect by providing written notice to the Registrar.

11.2 Registry-Registrar Agreement

The Registry Operator may require the Registrar to enter into an enforceable agreement containing terms acceptable to the Registry Operator and auDA as a condition of being granted access to the Registry (**Registry-Registrar Agreement**).

11.3 Registry Connections

- (a) The Registrar:
 - (i) is entitled to access and use up to 40 Registry Connections under this Agreement; and
 - (ii) may purchase additional Registry Connections for access and use in addition to the maximum number set out in clause 11.3(a)(i).
- (b) Any purchase of additional Registry Connections under clause 11.3(a)(ii) will be made on commercial terms for the price set out in Item 3 of Schedule 1, or as otherwise varied under clause 17.6.
- (c) Despite clauses 11.3(a)(ii) and 11.3(b), neither auDA or the Registry Operator are obliged to make any additional Registry Connections available for the Registrar's access and use.
- (d) The Registrar must not access or use more Registry Connections than it is entitled to under clause 11.3(a).

- (e) The Registry Connections under this Agreement are for the Registrar's use only, and the Registrar must not permit, enable or facilitate the access of, or use by, or the sharing of its Registry Connections with:
 - (i) any Third Party; or
 - (ii) for the avoidance of doubt:
 - (A) any Related Entity of the Registrar or any other member of the Registrar's corporate group; or
 - (B) any Affiliate of the Registrar,unless otherwise permitted by auDA in writing, in its absolute discretion.
- (f) Without limiting auDA's discretion under clause 11.3(e), if the Registrar:
 - (i) is a party to a Corporate Transaction; and
 - (ii) has obtained auDA's approval under clauses 33.1 and 33.2 in respect of that Corporate Transaction,then the Registrar must continue, and must procure that any potential assignee otherwise continues, to comply with the terms of this Agreement.
- (g) auDA may, in its absolute discretion, permit the Registrar to share its Registry Connections with any potential transferee or party to a Corporate Transaction (as applicable) as expressly authorised by auDA, subject to any conditions reasonably imposed by auDA and for such period expressly permitted by auDA which, for clarity, will not exceed 6 months from the date consent is given under this clause 11.3(g) (**Consent**) and the Registrar must strictly comply with the terms of the Consent.
- (h) The Registrar acknowledges that a breach of clauses 11.3(e), 11.3(f) or 11.3(g) is an Event of Default under this Agreement.

12. Suspension of Registrar's access to the Registry

12.1 Suspension

The Registrar acknowledges and agrees that auDA is entitled to direct the Registry Operator to suspend the Registrar's access to the Registry, or any part of it, if:

- (a) a breach of this Agreement is committed by the Registrar in relation to the Registry or the Registry Data, whether or not a Rectification Notice has been issued, an Event of Default has occurred or a Default Notice has been issued;
- (b) the Registrar's access to the Registry can, does or will, in auDA's reasonable opinion, materially adversely affect the security, integrity or stability of the DNS or the Registry, whether or not a breach of this Agreement has occurred;
- (c) the Registrar fails to provide a Validation Plan to auDA for approval as required under clause 6.2(a);
- (d) the Registrar fails to rectify its Validation Plan as required by auDA under clause 6.2(c);
- (e) auDA does not approve the Validation Plan, or any updated Validation Plan under clause 6.2(f)(iii), following the process as outlined in clauses 6.2(a) to 6.2(c);

- (f) the Registrar fails to update its Validation Plan as required by clause 6.2(f)(iii); or
- (g) such suspension is for the purposes of auDA limiting or preventing a Sub-contractor's access to the Registry or Registry Data under clause 21.5(b), or both,

and such right is in addition to any other right auDA has under this Agreement, and despite any contrary provision in any agreement between the Registrar and the Registry Operator.

12.2 Period of suspension

A suspension effected under clause 12.1 may be for any period determined by auDA in its sole and absolute discretion (**Suspension Period**).

12.3 Reduction in scope

- (a) If auDA becomes entitled to direct the Registry Operator to suspend the Registrar's access to the Registry under clause 12.1, then:
 - (i) auDA may, in addition to any other right under this Agreement:
 - (A) reduce the number of Designated Namespaces;
 - (B) transfer to another registrar any given Licences,
for which the Registrar provides Registrar Services under this Agreement; and
 - (ii) auDA may exercise its Step-in Rights in respect of any part of the .au ccTLD and any Designated Namespaces or Licences in clause 12.2.
- (b) The Registrar acknowledges and agrees that:
 - (i) it is entitled to continue to receive fees from a Registrant in respect of any Licence Application renewal during a Suspension Period;
 - (ii) other than as permitted under clause 12.3(b)(i), it is not entitled to receive any other fees or payments from a Registrant or any other person, including in respect of any new Licence Application during a Suspension Period; and
 - (iii) auDA may recover from the Registrar any fees, costs, Claims or expenses suffered or incurred by auDA in exercising its rights under this Agreement.

13. Registry Data

13.1 Registry Data

The Registrar acknowledges and agrees that:

- (a) the Registry Data is not proprietary Information of the Registrar;
- (b) as between auDA and the Registrar, the Registry Data is owned by auDA and, in any case, the Registry Data is not owned by the Registrar;
- (c) auDA may use the Registry Data for such purposes as it sees fit, including to comply with its obligations under the Sponsorship Agreement and the Australian Government Endorsement;
- (d) it is not entitled to claim that the Registry Data is confidential information of the Registrar or that the Registrar holds any proprietary rights, including Intellectual Property Rights, in the Registry Data;

- (e) the Registry Data is collected and stored by the Registrar and the Registry Operator for the benefit of auDA and the Australian public; and
- (f) without reducing the effect of any of the above, if any proprietary rights, title or interest are held by the Registrar in the Registry Data:
 - (i) with effect from the date of creation, the Registrar assigns to auDA absolutely and beneficially, the whole of its rights, title and interest including any Intellectual Property Rights in and to the Registry Data;
 - (ii) the Registrar must, and must ensure that its Personnel, execute all such documents and do all things required by auDA to give effect to the assignment contained in clause 13.1(f)(i), including registering all Intellectual Property Rights in the Registry Data in the name of auDA; and
 - (iii) auDA grants the Registrar a non-exclusive and non-transferable licence to use the Registry Data for the sole purpose of performing its obligations under this Agreement. For clarity, the Registrar may sub-license the rights granted under this clause 13.1(f)(iii) to any Sub-contractor, to the extent necessary for, and for the sole purpose of, the Sub-contractor performing its obligations under this Agreement for and on behalf of a Registrar, subject to a Sub-contractor Agreement (as contemplated by clause 21).

13.2 Prohibition on use of Registry Data

The Registrar must not use any Registry Data:

- (a) in any system testing or development environments; or
- (b) for data analysis, including data mining and machine learning, in respect of Licences where the Registrar is not the Registrar of Record,

or both, unless expressly authorised by auDA in writing or expressly set out in this Agreement, and subject always to the Registrar complying with all applicable Laws, this Agreement, and the Published Policies.

14. Information security

14.1 Security obligation

- (a) The Registrar must adopt and maintain an information security management system that is effective and appropriate for its business operations in accordance with the terms of this Agreement to safeguard the Registry Data, EPP interface, Registry Connections, WHOIS directory server, DNS server infrastructure and Registrar Systems, against any Security Breach.
- (b) The Registrar must:
 - (i) develop, implement and maintain a comprehensive risk management framework in compliance with ISO 31000 to identify and mitigate potential threats to the Registry Data, EPP interface, Registry Connections, WHOIS directory server, DNS server infrastructure and the Registrar Systems; and
 - (ii) adopt and maintain:

- (A) an effective "Information Security Management System" in compliance with ISO 27001, including any applicable substitute, replacement or updated standard or framework (if approved in writing by auDA) (ISO Compliance); or
 - (B) any other effective recognised standard or framework expressly approved by auDA in writing for the purpose of clause 14.1(a).
- (c) Subject to clause 14.3, the Registrar must at all times be certified under and compliant clause 14.1(b) during the Term, and must comply at all times with any conditions associated with that certification.
- (d) Without limiting clauses 14.1(a) to 14.1(c), unless any alternate security practices are agreed by auDA in writing, the Registrar must:
 - (i) implement and maintain a comprehensive security program of technical and organisational measures in compliance with the Strategies to Mitigate Cyber Security Incidents, also known as 'Essential Eight' published by the Australian Signals Directorate (<https://www.cyber.gov.au/acsc/view-all-content/strategies-to-mitigate-cyber-security-incidents>);
 - (ii) at a minimum, meet Maturity Level One of the 'Essential Eight Maturity Model' published by the Australian Signals Directorate; and
 - (iii) continuously improve its security practices,in respect of and to protect the Registry Data, EPP interface, Registry Connections, WHOIS directory server, DNS server infrastructure, and Registrar Systems.
- (e) At auDA's request, the Registrar must promptly provide to auDA evidence of compliance, whether through a certificate of compliance or otherwise, with this clause 14.1.
- (f) If a Registrar:
 - (i) fails to comply with clause 14.1(b); or
 - (ii) is assessed as non-compliant by an applicable assessor in regard to the relevant standard or framework under clause 14.1(b),then auDA reserves the right to:
 - (iii) suspend the Registrar's accreditation until the Registrar has been issued with an applicable compliance certificate; and
 - (iv) post a notice on the auDA Website, and require the Registrar to post a notice on its own website, that the Registrar is non-compliant, until the Registrar has been issued with a relevant and current certificate of compliance.

14.2 Certification process

If the Registrar does not satisfy clause 14.1 as at the Commencement Date, then the parties acknowledge and agree that:

- (a) the Registrar must take steps as necessary to comply with clause 14.1 by no later than 6 months after the Commencement Date (**Trigger Date**); and
- (b) if the Registrar is unable or unwilling to:
 - (i) meet the requirements in clause 14.2(a); and
 - (ii) implement the Minimum Controls as contemplated by clause 14.3,

(together the **Compliance Benchmarks**) on or before the Trigger Date, then auDA may, in its sole and absolute discretion, by notice in writing to the Registrar:

- (iii) suspend the Registrar's access to the Registry, or any part of it, in accordance with clause 12, until such time as the Registrar can satisfy the Compliance Benchmarks and this clause 14.2; or
- (iv) terminate this Agreement in accordance with clause 32.7.

14.3 Prescribed minimum security controls

- (a) The Registrar acknowledges and agrees that auDA may, acting reasonably, require the Registrar to implement and maintain new security programs or policies and prescribed minimum security controls, from time to time, which as the Commencement Date includes those controls set out in Schedule 4 (**Minimum Controls**).
- (b) Subject to clause 14.3(c), the Registrar must implement and maintain any prescribed Minimum Controls within 30 Days of being notified by auDA of the requirement to implement such Minimum Controls, or within such other timeframe as specified by auDA or as agreed between the parties.
- (c) auDA may direct the Registrar to implement prescribed Minimum Controls immediately, and the Registrar must comply with such request, if the immediate implementation of such Minimum Controls are, in auDA's reasonable opinion, required to prevent activities that can, will, or may have a materially adverse effect on the stable, secure and reliable operation of the DNS or the Registry, including its security and integrity.

14.4 Protection of the Registry Data

- (a) The Registrar must have in place appropriate software, systems and processes that are designed to detect and prevent Loss, unauthorised access, use, copying or disclosure of Registry Data and the Registrar Systems. The Registrar must immediately notify auDA of any suspected or actual unauthorised access, use, copying or disclosure of the Registry Data or the Registrar Systems, and of any matter or circumstance which arises that the Registrant reasonably believes poses a reasonable and significant risk of there being any unauthorised access, use, copying or disclosure of the Registry Data or the Registrar Systems.
- (b) The Registrar and its Personnel must not save, download, copy or reproduce any Registry Data or Registrant Data on any storage media or devices, or other similar equipment that are not part of the system used to deliver the Registrar Services under this Agreement, or that does not comply with the requirements in clause 14.1, unless required under Schedule 7 (SOC1 compliance) or by Law, without auDA's prior written consent.

14.5 Controlled access to Registry Data

The Registrar must:

- (a) only access or permit its Personnel to access Registry Data in accordance with clause 13, and only to the extent necessary to comply with the Registrar's obligations under this Agreement;
- (b) establish and maintain complete, accurate and up-to-date records of Registry Data accessed, collected, or changed by it (**Data Access Records**), which must include details of the Registrar's Personnel who accessed, collected or changed the Registry Data and the date it was accessed, collected or changed; and
- (c) at auDA's request, immediately provide auDA with copies of the Data Access Records.

14.6 Computer Emergency Response Team (CERT)

- (a) The Registrar represents and warrants that it has joined the Australian Cyber Security Centre (ACSC) Partnership Program (<https://www.cyber.gov.au/partner-hub/become-a-partner>), or if it is not eligible, the equivalent Computer Emergency Response Team (CERT) entity where the Registrar conducts its operations, prior to the Commencement Date. The Registrar must maintain its membership of the program and engage with ACSC or equivalent agency, as applicable, in relation to cyber security and data protection issues.
- (b) If the Registrar Services or Registrar are vulnerable to one or more identifiable security threats that may adversely affect the stability and security of the DNS or Registry, the Registrar must:
 - (i) notify ACSC via ReportCyber (<https://www.cyber.gov.au/acsc/report>) or equivalent foreign agency, as applicable of the identifiable security threat to obtain its advice and support;
 - (ii) take appropriate action in accordance with ACSC or agency's advice and recommendations; and
 - (iii) keep auDA informed of the advice from ACSC and the Registrar's response to the identified security threat.

14.7 Personal Information and Confidential Information

- (a) The Registrar must establish and maintain effective security measures to safeguard Confidential Information of auDA and Personal Information from loss, destruction, modification, misuse or unauthorised access (including undertaking any staff training as may be required).
- (b) The Registrar must immediately notify auDA of any potential, suspected or actual unauthorised access, use, copying or disclosure of Confidential Information of auDA or Personal Information.
- (c) The Registrar and its Personnel must not save, download, copy or reproduce any Confidential Information of auDA or Personal Information on any system that does not comply with clause 14.1 10, unless required under Schedule 7 (SOCl compliance) or otherwise without auDA's prior written consent.

14.8 Security, DNS Abuse and WHOIS Abuse Contacts

- (a) auDA and the Registrar nominate the representatives set out in Schedule 1 (Particulars) to act as the primary point of contact between auDA and the Registrar with respect to:
 - (i) all Registry Data and security issues, inquiries, matters or the obligations contained in this Agreement (**Security Contact**);
 - (ii) issues, inquiries or matters related to malicious conduct in the .au ccTLD (**DNS Abuse Contact**); and
 - (iii) issues, inquiries or matters related to abuse affecting or involving WHOIS (**WHOIS Abuse Contact**).
- (b) auDA and the Registrar must advise the other party in writing if there is any change to the Security Contact, DNS Abuse Contact, or WHOIS Abuse Contact during the Term.
- (c) If the Registrar receives a report of DNS Abuse via the DNS Abuse Contact, the Registrar shall provide the person that made the report with confirmation that the Registrar has received the report and shall take reasonable and prompt steps to investigate and respond appropriately. If the Registrar has actionable evidence that a Licence is being used for DNS Abuse, the Registrar must promptly take appropriate mitigation action as reasonably necessary to stop, or otherwise

disrupt, the Licence from being used for DNS Abuse. Mitigation action may vary depending on the circumstances, taking into account the cause and severity of the harm from the DNS Abuse and the possibility of associated collateral damage. For these purposes, **DNS Abuse** means malware, botnets, phishing, pharming, and spam (when spam serves as a delivery mechanism for the other forms of malicious conduct).

14.9 Security notifications

- (a) The Registrar must notify the auDA Security Contact of any Security Events in accordance with the requirements set out in Schedule 6 (Notification of Security Events).
- (b) The Registrar must immediately notify the auDA Security Contact if:
 - (i) it is aware of, is given information that indicates, or suspects that it is, or any of its Personnel are, in breach of any obligations relating to the Registry Data or security under this Agreement; or
 - (ii) it is or may be required by Law to disclose any Registry Data.
- (c) The Registrar must also immediately take all steps to prevent or stop, and comply with any direction issued by auDA from time to time, regarding a suspected or actual breach of this clause 14, and take all reasonable steps to mitigate the consequences of such suspected or actual breach.

14.10 SOCI compliance

Without limiting any other obligations in this clause 14, the parties must comply with the obligations set out in Schedule 7 (SOCI compliance).

14.11 Event of Default

Failure by the Registrar to comply with any obligation under this clause 14 is an Event of Default under this Agreement.

15. Audit and provision of Information

15.1 Security Audits

- (a) The Registrar must engage an independent expert approved by auDA to audit the Registrar's compliance with its obligations relating to the security of the Registry Data (including under clause 14.1):
 - (i) before the Commencement Date (with a copy of the independent expert's report to be delivered to auDA on the Commencement Date);
 - (ii) every 3 years after the Commencement Date (with a copy of the independent expert's report to be delivered to auDA on or before the 3 year anniversary) with separate interim surveillance audits (as distinct from a full comprehensive audit) to be carried out for each intervening year (with a copy of the independent expert's report to be delivered to auDA on or before the anniversary of the Commencement Date); and
 - (iii) in the case of a Category 1 Incident, Category 2 Incident or a Data Breach, immediately on request to the Registrar, at any time auDA chooses (with a copy of the independent expert's report to be delivered to auDA within 10 Business Days of the request).

15.2 Other audit rights

- (a) At any time during the Term, auDA may also require the Registrar to engage an independent expert to assess or audit the Registrar's compliance with its obligations relating to the Registrar's auDA Accreditation, the Registry or any Registry Data under this Agreement in which case the Registrar must provide the results of that audit to auDA in writing as soon as reasonably practicable.
- (b) For the purposes of an assessment or audit under this clause 15.2, the appointment of the independent expert will be made by auDA.

15.3 Co-operation by Registrar

The Registrar must ensure that its Personnel reasonably co-operates during, or for the purpose of this clause 15, including by:

- (a) providing appropriate access and secure office facilities in the relevant premises;
- (b) providing copies of any documents, records or data in accordance with clause 15.4, which must be given to auDA within 10 Business Days of being requested to do so;
- (c) making appropriate Personnel promptly available to answer questions; and
- (d) if necessary, installing and running audit software on the Registrar's and its Personnel's information technology systems.

15.4 Request for Information and documents

- (a) auDA may request copies of any Information, documents, records or data from the Registrar:
 - (i) for the purposes of any audit activities under this clause 16;
 - (ii) to the extent reasonably required, for any other reason, and in respect of any subject matter, in connection with this Agreement; or
 - (iii) without limiting clauses 15.4(a)(i) and 15.4(a)(ii), where auDA reasonably believes or suspects that the activities or circumstances of the Registrar pose a risk to:
 - (A) the operation of the .au ccTLD;
 - (B) the operations of any Registrant; or
 - (C) the integrity, security and stability of the DNS or the Registry.
- (b) The Registrar must comply with any requests made under this clause 15.4 within 5 Business Days of such request and a failure to do so constitutes an Event of Default.

15.5 Costs

- (a) Subject to clause 15.5(b), each party is responsible for its own costs incurred in respect of this clause 15.
- (b) The Registrar is solely responsible for all costs and expenses associated with complying with clause 15.1.

16. Representations and warranties

16.1 Representations and warranties

Each party warrants and represents that, as at the date of execution of this Agreement and on each day during the Term:

- (a) if it is a corporation, it is registered and validly existing under the Laws of Australia or the applicable Laws of the jurisdiction under which it is registered, incorporated and operating;
- (b) it has full legal capacity and power to enter into this Agreement and to carry out the transactions that this Agreement contemplates;
- (c) all corporate action has been taken that is necessary or desirable to authorise its entry into this Agreement and its carrying out of the transactions that this Agreement contemplates;
- (d) it holds each Authorisation that is necessary or desirable to:
 - (i) execute this Agreement and to carry out the transactions that this Agreement contemplates; and
 - (ii) ensure that this Agreement is legal, valid, binding and admissible in evidence,
- (e) it is complying with any conditions to which any of these Authorisations is subject;
- (f) this Agreement constitutes legal, valid and binding obligations, enforceable against it in accordance with its terms, subject to any necessary stamping or registration;
- (g) neither its execution of this Agreement, nor the carrying out by it of the transactions that this Agreement contemplates, does or will:
 - (i) contravene any Law to which it or any of its property is subject or any order of any Regulatory Authority that is binding on it or any of its property;
 - (ii) contravene any Authorisation;
 - (iii) contravene any undertaking or instrument binding on it or any of its property; or
 - (iv) contravene its constitution;
- (h) there are no actions or Claims pending or threatened against it or by, against or before any person that may have a material effect on the subject matter of this Agreement;
- (i) it is not the subject of an Insolvency Event; and
- (j) it is not entering into this Agreement as trustee of any trust or settlement.

16.2 Additional Registrar warranties

In addition to clause 16.1, the Registrar warrants and represents to auDA that:

- (a) all written Information and reports which it has furnished, or will furnish, to auDA in connection with this Agreement (including pursuant to auDA Accreditation) are true, accurate and not misleading in all material respects, whether by omission or otherwise; and
- (b) the warranties it has given in clauses 10.5, 19.3, **Error! Reference source not found.** and 27.5 are true and correct and not misleading in any material way.

16.3 Reliance on representations and warranties

Each party acknowledges that:

- (a) each other party has executed this Agreement and agreed to take part in the transactions contemplated by this Agreement in reliance on the representations and warranties that are made in this clause 16; and
- (b) subject to clause 16.3(a), it has exercised its independent skill and judgment and has carried out its own investigations in its decision to enter into this Agreement.

17. Payment of Fees

17.1 Obligation to pay

- (a) In consideration of auDA granting auDA Accreditation to the Registrar and providing access to the Registry to the Registrar, the Registrar must pay the Fees to auDA.
- (b) The Fees are payable for each Payment Period in advance.
- (c) For the purposes of this clause 17, auDA will issue a tax invoice to the Registrar on 1 July of each calendar year, in respect of Fees payable for the following Payment Period (**Tax Invoice**).
- (d) The Registrar must pay Fees within 30 Days of the date of issue of the relevant Tax Invoice (**Due Date**).

17.2 Timely payment

Time is of the essence for all payments of Fees due and payable under this Agreement. The Registrar must make all payments to auDA under this Agreement regardless of any dispute which may exist between auDA and the Registrar.

17.3 Interest on late payment

- (a) If the Registrar fails to pay any amounts due and payable under this Agreement by the relevant Due Date, then it must pay interest on the outstanding amount and such interest:
 - (i) must be paid on written demand of auDA;
 - (ii) is calculated from and including the Due Date but excluding the day on which it is paid in full; and
 - (iii) accrues each day at the Prescribed Rate.
- (b) The Registrar's right to require payment of interest under clause 17.3(a) does not affect any other rights or remedies it may have in respect of a failure to pay an amount due under this Agreement.

17.4 Default for non-payment of Fees

If any amount due and payable by the Registrar remains unpaid 30 Days after the Due Date, the Registrar will be deemed to have committed an Event of Default.

17.5 No set-off

The Registrar must not exercise any right of set-off on any account against auDA.

17.6 Variations to Fees

- (a) auDA may change the Fees from time to time by giving the Registrar at least 30 Days prior written notice, and such changes will be effective on and from the next date Fees are payable, and provided that the relevant notice period has passed.
- (b) On receipt of notice under clause 17.6(a), the Registrar may terminate this Agreement in accordance with clause 32.6.

18. Prohibited activities

18.1 No using Registry Data or WHOIS Data to solicit Registrants

The Registrar must not use Information obtained from the Registry or auDA's WHOIS Data to solicit business from, or to otherwise make contact with, any Registrant, unless:

- (a) the Registrar is the registrar of the Registrant, as identified in the Registry;
- (b) the Registrant has previously contacted the Registrar in respect of the registration of a Domain Name;
- (c) the Registrant is otherwise a customer of the Registrar and has authorised the Registrar to use information obtained to accept business from or make contact with the Registrant; or
- (d) both the Registrant and their registrar, as identified in the Registry, have consented in writing to such use of the information.

18.2 Prohibited registration activities

The Registrar must not do any of the following:

- (a) register any Domain Names for itself on its own behalf unless such registration is for its own legitimate use in providing Registrar Services under this Agreement;
- (b) register Domain Names for the sole purpose of preventing any other registrations, unless it is done at the request of a person or Registrant, subject to legitimate provision of licensing services on an ordinary commercial basis;
- (c) register or renew Licences in advance of a request from a person or Registrant for the purpose of restricting a competitor from being able to register the Domain Name on behalf of the same person or Registrant. This includes anticipating a person's preference for a Domain Name or pre-registering Domain Names that may be in demand in the future;
 - (i) be involved in, or
 - (ii) register any Domain Name for, or on behalf of; or provide Registrar Services to, any Affiliate of the Registrar;
- (d) be involved in any activity, or permit a Related Entity of the Registrar to be involved in any activity, which involves the acquisition or accumulation of Domain Names which are not connected to the provision of Registrar Services under this Agreement, unless such activity is permitted under a Published Policy;
- (e) do, enable or facilitate any activities that aim to artificially reduce the supply and availability of Domain Names; and

- (f) in respect of any month, provide refunds for more than 10% of the total number of Licence Agreements entered into by the Registrar under clause 6.4 in that month due to the Registrant cancelling within any cooling off period that applies under the Licensing Rules, unless an exemption has been granted by auDA to permit a higher proportion of refunds in that month.

19. Registrar's other obligations

19.1 Positive covenants

The Registrar must:

- (a) act in good faith in its dealings with auDA, the Registry Operator, other registrars and each Registrant;
- (b) subject to clause 19.1(a), immediately cancel the Licence, if the Registrar becomes aware or has cause to believe that a Registrant is no longer entitled to a Licence as a result of the Registrant:
 - (i) ceasing to be a validly incorporated entity with the capacity to enter into, or perform its obligations under the Licence Agreement;
 - (ii) failing to have or maintain an Australian Presence; or
 - (iii) failing to remedy any default, or carry out any rectification required under the Licence Agreement as within the time prescribed under the Licensing Rules;
- (c) provide to auDA (at auDA's request) and to the Registry Operator (at all times), all Information related to each approved Licence, including Information relating to the renewal, transfer, modification, or cancellation of a Licence;
- (d) accurately represent to the Registrants, the media, any Regulatory Authority and the general public, the Published Policies and the Registrar's relationship with and status in the domain name infrastructure relative to the Registry Operator and auDA;
- (e) keep the Registry Operator informed of any changes in the Information supplied to the Registry Operator, including Information supplied on behalf of Registrants and all changes of the Registrar's personal or company details;
- (f) provide to auDA from time to time, upon auDA's request, all Information in relation to the Registrar and the operation of the Registrar's business as auDA may reasonably request;
- (g) within 2 Business Days, give notice to auDA of any impending Claims or material disputes against the Registrar by any person or authority relating directly or indirectly to its provision of Registrar Services, including arbitration and administrative or governmental investigation;
- (h) continue to hold all material Authorisations necessary to perform its obligations under this Agreement;
- (i) comply with all applicable Laws; and
- (j) comply with all reasonable and lawful directions of auDA in relation to the Registrar's provision of Registrar Services under this Agreement, including without limitation, in relation to the Registrar's access to the Registry.

19.2 Negative covenants

The Registrar must not:

- (a) approve any Licence Application, nor submit to or place in the Registry, any Registrant Data which relates to a Domain Name which does not comply with the Published Policies;
- (b) use auDA's Intellectual Property Rights or industrial property other than as permitted under this Agreement;
- (c) be involved in any activity which may directly or indirectly bring the Registry Operator or auDA into disrepute;
- (d) represent to any person that the Registrar enjoys access to the Registry that is superior to that of any other auDA Accredited registrar;
- (e) use any Personal Information held in relation to a Registrant or other person other than in accordance with the Published Policies, this Agreement, and all applicable Laws;
- (f) act as an agent for a Third Party in respect of registration of the Licence and for the purposes of the Licence Agreement;
- (g) use any Information belonging to or regarding auDA other than in accordance with this Agreement; or
- (h) improperly, negligently or wilfully do anything, or omit to do anything, which can or does adversely affect the stable, secure and reliable operation of the DNS or the Registry, including their security and integrity.

19.3 Insurance

- (a) The Registrar must, at its own expense, take out and maintain in force the Required Policies with a reputable and financially sound insurer during the Term, for policies written on a "claims made" basis:
- (b) If for any reason an insurer cancels, or fails or declines to renew, a Required Policy then the Registrar must immediately purchase a replacement policy and ensure that the replacement policy includes "prior acts coverage endorsement" effective from the date on which the previous Required Policy ceased to have effect.
- (c) The Registrar must promptly provide to auDA, upon request, satisfactory evidence that the Required Policies are in effect.

19.4 Handling of Registrant complaints

- (a) The Registrar must act promptly to investigate all complaints from or regarding any Registrant in relation to a Domain Name, a Licence or a Licence Agreement, and which the Registrar is identified as the registrar in the Registry.
- (b) The Registrar must comply with Part 3 of the Licensing Rules with respect to handling any complaints under this clause 19.4.
- (c) A Registrar must not refer a complaint to auDA until the Registrar has investigated and made a decision in respect of such complaint.
- (d) The Registrar must, during the Term of, and for a period of 7 years after, this Agreement:
 - (i) keep records of all complaints received, investigated and decided or referred to auDA under this clause 19.4; and
 - (ii) ensure such records comply with any requirements set out in the Licensing Rules or the Published Policies and at a minimum, include:

- (A) the date on which the complaint was received;
 - (B) the subject matter of the complaint;
 - (C) the decision; and
 - (D) the date that the decision was communicated to the complainant; and
- (e) at auDA's request, immediately provide auDA with copies of the records required to be kept by the Registrar under this clause 19.4(d).

20. GST

20.1 Interpretation

In this clause 20:

- (a) terms or expressions which have a defined meaning in the GST Act have the same meaning as in the GST Act; and
- (b) any reference to a party includes the representative member of a GST group of which that party is a member.

20.2 Consideration excludes GST

Unless otherwise expressly stated, all amounts to be paid or provided under this Agreement are expressed exclusive of GST.

20.3 Payment of GST

- (a) If GST is payable on any supply made under this Agreement, the recipient must pay to the supplier an additional amount (**GST Amount**) equal to the GST payable on that supply at the same time as the consideration for the supply is to be paid or provided.
- (b) Clause 20.3(a) does not apply to the extent that:
 - (i) the consideration for the supply is stated to include GST; or
 - (ii) GST on the supply is reverse charged and payable by the recipient.

20.4 Adjustment events

If an adjustment event arises in relation to a supply made under this Agreement, the GST Amount must be adjusted to reflect that adjustment event. A corresponding payment must be made by the supplier to the recipient or by the recipient to the supplier, as the case may be.

20.5 Calculation of amounts

If this Agreement requires an amount to be calculated by reference to another amount (**Reference Amount**) that will be:

- (a) received for a taxable supply; or
- (b) paid for a creditable acquisition,

then the Reference Amount must be reduced so as to exclude any part of the Reference Amount paid or received on account of GST, as the case may be.

20.6 Reimbursement and indemnity payments

If this Agreement requires a party to reimburse or indemnify another party for a cost or expense, the amount of the cost or expense must be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified is entitled for that cost or expense.

21. Sub-contracts

21.1 Registrar may sub-contract

- (a) The Registrar may engage or employ any person, sub-contractor or agent (**Sub-contractor**) to provide any part of the Registrar Services under this Agreement.
- (b) The Registrar must provide to auDA on demand, a list of all Sub-contractors at the relevant time, together with any details in respect of those Sub-contractors reasonably requested by auDA.

21.2 Agreements with Sub-contractors

- (a) Each agreement between the Registrar and a Sub-contractor relevant to such Sub-contractor performing activities in connection with this Agreement (**Sub-contractor Agreement**), including "resellers", must contain any provisions that:
 - (i) prevent activities that have, or may have (in auDA's view), a materially adverse effect on the security, integrity or stability of the DNS or the Registry;
 - (ii) are consistent with the Registrar's obligations under this Agreement, including, where applicable, provisions obliging Registrants to comply with all applicable Published Policies, in accordance with clause 5.2;
 - (iii) ensure auDA's and the Registrar's compliance with this Agreement;
 - (iv) ensure a Registrant's ability to use, or continue to use, a Domain Name is not adversely affected; and
 - (v) are required by auDA in writing from time to time, to comply with all applicable Laws, or to ensure the stable, secure and reliable operation of the DNS and .au ccTLD including its integrity and resilience.
- (b) The Registrar acknowledges and agrees that it must do all things necessary to procure a Sub-contractor's agreement to any clauses specified by auDA under clause 21.2(a), including amending existing agreements or entering into new agreements with Sub-contractors.

21.3 Identification of relationship with the Registrar

The Registrar must procure that the Sub-contractor identifies its relationship with the Registrar:

- (a) in any instrument of, or purporting to be signed or issued by or on behalf of the Sub-contractor, or issued in the course of, or for the purposes of, performing services under the Sub-contractor Agreement relevant to Registrar Services; and
- (b) on the Sub-contractor's website.

21.4 Registrar to remain liable

If the Registrar engages a Sub-contractor, the Registrar is:

- (a) not relieved of any of its Liabilities or obligations under this Agreement; and
- (b) liable to auDA for all acts, defaults and omissions of the Sub-contractor and the Sub-contractor's Personnel (including its employees, officers, agents and contractors) as if they were the acts, defaults or omissions of the Registrar.

21.5 Removal of Sub-contractor

- (a) auDA may direct the Registrar to:
 - (i) cease engaging or conducting activities with a Sub-contractor in respect of the Registry, Registry Data and the Registrar Services (and otherwise in connection with the Registrar's performance of this Agreement); or
 - (ii) terminate any agreement the Registrar has in place with any given Sub-contractor.
- (b) auDA may take any further action it deems necessary to effect any cessation or termination under clause 21.5(a) (to limit or prevent a Sub-contractor's access to the Registry and Registry Data) including suspending the Registrar's access to the Registry and Registry Data under clause 12.

21.6 No liability

The Registrar unconditionally indemnifies auDA, its Related Entities and its Personnel against any Liability suffered by any person in connection with any Claims arising as a result of or in relation to the Registrar, its Personnel or Sub-contractors breaching this Agreement, any Laws or Published Policies.

22. Step-in Rights

22.1 Circumstances in which auDA may exercise Step-in Rights

If a Step-in Event occurs, auDA may exercise the Step-in Rights.

22.2 Exercise of Step-in Rights

- (a) If a Step-in Event occurs, auDA may, at its sole discretion, either itself or through one or more nominee(s), step-in and take control of the provision of the Registrar Services to the Registrants of the Registrar.
- (b) If auDA wishes to exercise its rights under this clause 22, it will use its best endeavours to provide the Registrar with as much notice as is reasonably practicable in the circumstances, or provide the Registrar with notice as soon as practicable after exercising its Step-in Rights where the giving of advance notice is not reasonably practicable.
- (c) If clause 22.2(a) applies:
 - (i) the Registrar will fully co-operate with auDA, its Personnel or its nominee(s) to the extent reasonably necessary for auDA to exercise its rights under this clause 22, including by:
 - (A) providing all Information as reasonably requested by auDA;
 - (B) doing all things reasonably necessary to remedy the default or non-performance that gave rise to the Step-in Event; and
 - (C) to the extent required by auDA or its nominee(s), make available to auDA or such nominee(s), all rights and benefits of services under any existing Licence Agreements and Sub-contractor Agreement,

at no cost to auDA, to enable auDA and its nominee(s) to fully exercise the Step-in Rights under this clause 22, including giving auDA and its nominee(s) access to the Registrar's premises and all, systems and software. auDA and all of its Personnel, sub-contractors and resources or its nominee(s) will comply with the Registrar's reasonable security and access policies, including obligations of confidentiality, and

- (ii) to the extent the Registrar Services are performed by auDA or its nominee(s) and Third Party service providers, the Registrar is relieved from its obligations to perform the Registrar Services (including corresponding obligations) during the period for which, and to the extent that, auDA and its nominee(s) exercises control over the Registrar Services.
- (d) The Registrar indemnifies auDA, its Related Entities and its Personnel against any and all Liability, damage, charge, reasonable expense, outgoing or cost (including legal costs and defence settlement costs) directly or indirectly arising out of, or in connection with any infringement of any Third Party's rights (including Intellectual Property Rights) in and to any equipment and software that is accessed by auDA or any of its Related Entities or Personnel in connection with auDA exercising its rights under this clause 22.
- (e) If auDA's control over the Registrar Services under this clause is likely to exceed 30 Days (as reasonably determined by auDA), the Registrar will work with auDA to develop a plan to manage resolution of the problem. Once auDA approves that plan, the Registrar will immediately comply with the plan at its own expense.
- (f) auDA will use all reasonable efforts:
 - (i) to minimise any period during which it takes control of the Registrar Services under this clause 22;
 - (ii) to re-transition the Registrar Services back to the Registrar once the Registrar demonstrates to auDA's reasonable satisfaction that the Registrar can recommence provision of the Registrar Services in accordance with this Agreement; and
 - (iii) if the re-transition has not occurred within 60 Days of auDA taking control of the Registrar Services, the Registrar may require good faith consultation with auDA with respect to the period within which the Registrar Services are expected to be re-transitioned, and any other necessary issues the Registrar considers relevant.
- (g) The Registrar is not entitled to receive any fees or payments for the period during which auDA exercises its Step-in Rights in accordance with this clause.
- (h) auDA and its nominees are not liable to the Registrar for any Liabilities suffered by the Registrar arising out of or in connection with auDA's exercise of its Step-in Rights except where there is a fraudulent or negligent act or omission by auDA.
- (i) If auDA exercises its Step-in Rights, it may cease to exercise any such rights at any time by giving notice to the Registrar.
- (j) auDA's Step-in Rights are in addition to, and do not limit in any way, any other rights and remedies available to auDA under the Agreement or under any Law.
- (k) auDA is not obliged in any way to remedy or cure any default or Step-in Event or to overcome or mitigate any risk or risk consequences in respect of which auDA exercises Step-in Rights.
- (l) In the event auDA ceases exercising any Step-in Rights, the Registrar must promptly and without delay, recommence performance of those of the Registrar's obligations under the Agreement which were suspended under clause 22.2(c)(ii).

- (m) The Registrar must continue performing any Registrar Services not affected by the exercise of Step-in Rights by auDA.
- (n) auDA will, at the cost and expense of the Registrar, give reasonable assistance to the Registrar to ensure that the process of auDA ceasing to exercise Step-in Rights, and the Registrar recommencing to perform its obligations, is effected as efficiently as possible.
- (o) Subject to the Registrar complying with its obligations under this clause 23, if auDA has exercised its Step-in Rights, to the extent auDA has taken actions or failed to take actions that impede the performance of the Registrar under the Agreement, the Registrar will not be held responsible for that failure to perform.
- (p) For clarity, in exercising the Step-in Rights under this clause 22, auDA and any of its nominees are entitled to:
 - (i) be listed as the Registrar of Record in the Registry for all Domain Names administered by the Registrar pursuant to this Agreement and the Licence Agreements; and
 - (ii) take all actions which the Registrar would otherwise be entitled to take as Registrar of Record, in respect of such Domain Names.

23. Privacy

23.1 'Opt-in' under Privacy Act

If at the Commencement Date, the Registrar is not required by Law to comply with the Privacy Act (including the Australian Privacy Principles under the Privacy Act), then on or before the Commencement Date, the Registrar must advise the Commissioner in writing that the Registrar chooses to be treated as an "organisation" under the Privacy Act, under section 6EA(2) of that Act.

23.2 No revocation

The Registrar must not revoke its choice to be treated as an "organisation" under the Privacy Act, except with the prior approval of auDA.

23.3 General privacy obligations

- (a) In performing this Agreement, the Registrar must comply, and must make sure that all of its Personnel also comply, with all Privacy Laws in respect of all Personal Information.
- (b) Without limiting clause 23.3(a), the Registrar must, and must ensure that its Personnel, co-operate with any reasonable requests or inquiries made by auDA in relation to the management of Personal Information by or on behalf of the Registrar under or in connection with this Agreement.
- (c) In respect of any Personal Information the Registrar provides or makes available or accessible to auDA, the Registrar will ensure that it has provided appropriate notifications and procured the necessary consents as required by any Law, including:
 - (i) to allow auDA to receive, use and disclose (including to transfer) that Personal Information for the purposes of this Agreement and otherwise in respect of the management of the DNS;
 - (ii) to inform persons or Registrants that the Registrar collects Personal Information from third parties such as Regulatory Authorities or reliable and independent databases; and

- (iii) to allow the receipt, use and disclosure (including transfer) of that Personal Information on WHOIS in accordance with the Published Policies.
- (d) The Registrar must take all necessary steps to ensure that (in relation to Personal Information it provides or makes available under this Agreement):
 - (i) no part of the Personal Information is corrupted or deleted;
 - (ii) the Personal Information is secured using current industry leading security methods (as updated from time to time through the term of the Agreement) and protected from misuse, interference, corruption and loss; and
 - (iii) the Personal Information is protected against unauthorised access, use, modification, processing or disclosure.

23.4 Privacy Breaches

- (a) Without limiting clause 23.3, if there are reasonable grounds to believe that there has been a Privacy Breach in respect of the Personal Information held by the Registrar or auDA in connection with this Agreement:
 - (i) the Registrar will be responsible for conducting any assessment required under the Privacy Laws in respect of a Privacy Breach affecting the Registrar Systems or Personal Information. As part of the assessment, the Registrar must liaise with auDA in respect of the suspected Privacy Breach;
 - (ii) if the Privacy Breach relates to Personal Information held, accessed or processed by the Registrar relating to the Registrar's Registrants, the Registrar agrees that it must make any notifications required by Law in respect of that Privacy Breach, including to the Office of the Australian Information Commissioner and to affected individuals;
 - (iii) if the Registrar fails to notify the affected individuals within a timeframe mutually agreed by the parties (acting reasonably) or, if the parties cannot mutually agree a timeframe, within a reasonable timeframe as determined by auDA, in good faith, having regard to the circumstances of the Privacy Breach and potential harm to affected individuals (and having given the Registrar a reasonable opportunity to agree a timeframe), then auDA can use the Registry Data to notify the Commissioner, the Office of the Australian Information Commissioner or affected individuals, which such notice may include the Registrar's name and details of the incident as required;
 - (iv) if there is a Privacy Breach in respect of information held by auDA relating to the Registrar's Registrants, the Registrar agrees that it must assist auDA, including making any notification to the Registrar's Registrants, in respect of that Privacy Breach on request by auDA;
 - (v) each party agrees to cooperate and assist the other party, as reasonably required, in respect of any assessment or notifications required under clauses 23.4(a)(ii) and 23.4(a)(iv); and
 - (vi) the parties agree that any information provided by either party in respect of the assessment of any suspected Privacy Breach is Confidential Information for the purposes of this Agreement unless otherwise notified by the disclosing party.

23.5 Record keeping, audits and access to facilities

- (a) During the Term, the Registrar must (a) provide auDA with reasonable access to, or copies of, such premises, records and documents which contain Personal Information, as is reasonably

necessary to enable auDA to audit the Registrar's compliance with this Agreement. The costs of such audit will be borne by auDA.

- (b) The Registrar will grant auDA access to facilities or systems, which the Registrar uses to provide the Registrar Services where and to the extent necessary for security, privacy or other audits as required by this Agreement, provided that the provision of such access will only be granted to the extent that auDA has given the Registrar reasonable prior written notice of such required access (unless there is an imminent risk to the proper provision of the Registrar Services, in which case auDA will give as much notice as is practicable in the circumstances).
- (c) In undertaking the audits referred to in clause 23.5(a) and 23.5(b), auDA will at all times comply with the requirements in clause 27 except to the extent that auDA, in the course of the audit, discovers a breach of this Agreement by the Registrar.
- (d) Without limiting clause 23.3, the Registrar must ensure that all records in the Registrar's possession or control which contain Personal Information are, at the end of the Term or upon earlier expiry or termination of this Agreement, at auDA's option, either returned to auDA in a format reasonably requested by auDA, or permanently deleted or destroyed in the presence of a person duly authorised by auDA to oversee such deletion or destruction, except to the extent that the Registrar is required by applicable law to preserve such records.

23.6 Identity of Registrants

- (a) The Registrar must use its reasonable endeavours to obtain accurate information about the identity of Registrants and must take all reasonable steps to ensure it does not allow Registrants to conceal their true identity from the Registrar or the Registry.
- (b) Without limiting clause 23.6(a), the Registrar must not provide any service which allows Registrants to conceal their identity or the identity of the beneficial owner of a Licence.
- (c) The Registrar must provide conspicuous notice to each Registrant at the time of the Registrant's application for a Licence, to ensure that the Registrant is made aware that certain information they provide will become publicly available and searchable in the WHOIS Data.

23.7 Breaches of this clause

- (a) If the Registrar becomes aware of any breach or alleged breach of its obligations under this clause 23, the Registrar must:
 - (i) notify auDA immediately and provide full particulars of the breach and the cause; and
 - (ii) comply with any reasonable direction from auDA with respect to remedying that breach.

23.8 Privacy code

The Registrar must

in the event that auDA adopts an approved privacy code, at auDA's request, provide in writing to the Commissioner, notification that it consents to being bound to any such privacy code.

24. Conflict of interests

24.1 Separation with Registry operations

Subject to clause 24.2, auDA enters this Agreement and grants any auDA Accreditation to the Registrar on condition that during the Term, the Registrar:

- (a) must not itself; and
- (b) must ensure that none of its Related Entities,

whether directly or indirectly, and whether solely or jointly with any other person, carry on or be engaged or involved in any trade, business or undertaking as an operator of a Registry.

24.2 Exceptions

This clause 24 does not prevent the Registrar or any of its Related Entities from holding marketable securities in the Registry Operator or any Related Body Corporate of the Registry Operator, provided that:

- (a) it is for investment purposes only;
- (b) the marketable securities are quoted on a recognised securities exchange in Australia or elsewhere at the time of acquisition; and
- (c) the collective holding by the Registrar and all its Related Entities in the Registry Operator or any Related Body Corporate of the Registry Operator does not exceed 10% of all the issued share capital of the Registry Operator or its Related Body Corporate (as the case may be).

24.3 Acknowledgement

The Registrar acknowledges that the covenants in clause 24.1 are:

- (a) material to auDA's decision to enter into the Agreement;
- (b) fair and reasonable having regard to the intentions of the Australian Government Endorsement, ICANN Sponsorship Agreement, and the auDA Constitution to introduce competition into the .au ccTLD; and
- (c) reasonably required by auDA to protect the interests of the Australian public and the requirements of the Australian Government Endorsement and the auDA Constitution.

25. Obligations of auDA

25.1 General obligations

With respect to all matters that impact the rights, obligations or role of the Registrar, auDA must during the Term:

- (a) exercise its responsibilities in good faith and in an open and transparent manner;
- (b) not unreasonably restrain competition and, to the extent possible, promote and encourage robust competition;
- (c) not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably;

- (d) not single out the Registrar for disparate treatment unless justified by substantial and reasonable cause; and
- (e) ensure, through its reconsideration and independent review policies, adequate opportunity for the Registrar to contribute to auDA's standards, policies, procedures or practices.

25.2 Assignment to new authority

If another entity receives Australian Government Endorsement with respect to the .au ccTLD and the Designated Namespaces, auDA may, without the consent of the Registrar, but subject to providing the Registrar with prior written notice, transfer all its rights, obligations and liabilities under this Agreement to the other entity in accordance with clause 33.5.

26. Confidentiality

26.1 No unauthorised storage or reproduction

The Registrar and its Personnel must not save, download, copy or reproduce any Confidential Information of auDA on any system that does not comply with clause 14.1, without auDA's prior written consent.

26.2 Obligations of confidentiality

Subject to clauses 26.3 and 26.4, a Receiving Party must:

- (a) keep the Confidential Information confidential and not directly or indirectly disclose, divulge or communicate any Confidential Information to, or otherwise place any Confidential Information at the disposal of, any other person without the prior written approval of the Disclosing Party;
- (b) take all reasonable steps to secure and keep secure all Confidential Information coming into its possession or control;
- (c) not memorise, use, modify, reverse engineer or make copies, notes or records of the Confidential Information for any purpose other than in connection with the performance by the Receiving Party of its obligations under this Agreement; and
- (d) take all reasonable steps to ensure that any person to whom the Receiving Party is permitted to disclose Confidential Information under clause 26.4 complies at all times with the terms of this clause 26 as if that person were a Receiving Party.

26.3 Exceptions

The obligations of confidentiality under clause 26.2 do not apply to:

- (a) any Confidential Information that:
 - (i) is disclosed to the Receiving Party by a Third Party entitled to do so, whether before or after the date of this Agreement;
 - (ii) was already lawfully in the Receiving Party's possession when it was given to the Receiving Party and was not otherwise acquired from the Disclosing Party directly or indirectly;
 - (iii) is generally available to the public at the Commencement Date or subsequently becomes so available other than by reason of a breach of this Agreement; or

- (b) any Confidential Information required to be disclosed by auDA:
 - (i) to any Government Authority;
 - (ii) to ICANN, ICANN's successors or assignee or any other industry body with authority over the .au ccTLD; or
 - (iii) in accordance with clause 9 of Schedule 8 (SOCl compliance);
- (c) any disclosure of Confidential Information by the Receiving Party that is required by Law or the rules or regulations of any Financial Market to which a party, or a Related Entity of a party, is subject if, to the extent practicable and as soon as reasonably possible, the Receiving Party:
 - (i) notifies the Disclosing Party of the proposed disclosure;
 - (ii) consults with the Disclosing Party as to its content; and
 - (iii) uses reasonable endeavours to comply with any reasonable request by the Disclosing Party concerning the proposed disclosure.

26.4 Authorised disclosure

Without limiting this clause 26, a Receiving Party may disclose Confidential Information to any Related Entity, employee, agent, contractor, officer, professional adviser, banker, auditor or other consultant of the Receiving Party (each a **Recipient**) only if the disclosure is made to the Recipient strictly on a "need to know basis" and, before the disclosure:

- (a) the Receiving Party notifies the Recipient of the confidential nature of the Confidential Information to be disclosed;
- (b) the Recipient undertakes to the Receiving Party (for the benefit of the Disclosing Party) to be bound by the obligations in this clause 26 as if the Recipient were a Receiving Party in relation to the Confidential Information to be disclosed to the Recipient; and
- (c) if requested to do so by the Disclosing Party, the Recipient signs an undertaking or deed in a form acceptable to the Disclosing Party (and for the benefit of the Disclosing Party) agreeing to be bound by the obligations in this clause 26 as if the Recipient were a Receiving Party in relation to the Confidential Information to be disclosed to the Recipient.

26.5 Return or destruction of Confidential Information

Immediately on the written request of the Disclosing Party or on the expiry or termination of this Agreement for any reason, a Receiving Party must:

- (a) cease the use of all Confidential Information of or relating to the Disclosing Party (or any Related Entity of the Disclosing Party);
- (b) deliver to the Disclosing Party all documents and other materials in its possession or control containing, recording or constituting that Confidential Information or, at the option of the Disclosing Party, destroy, and certify to the Disclosing Party that it has destroyed, those documents and materials; and
- (c) for Confidential Information stored electronically, permanently delete that Confidential Information from all electronic media on which it is stored, so that it cannot be restored.

26.6 Liability for breach by Recipient

The Receiving Party is liable for any breach of this clause 26 by a Recipient as if the Recipient were a Receiving Party in relation to the Confidential Information disclosed to the Recipient.

27. Intellectual property

27.1 Use of Intellectual Property Rights by the Registrar

- (a) The Registrar must not use any Intellectual Property Rights owned or provided by auDA (including auDA's name or trade marks) without auDA's prior written consent for any purpose, except as permitted by this clause 27.
- (b) Any rights granted under this clause 27 are personal to the Registrar and must not be transferred or assigned or sub-licensed to any other person, including any Related Entity of the Registrar.
- (c) Despite this clause 27.1, and subject to clause 27.4, the Registrar may sub-license to a Sub-contractor any rights granted to the Registrar under this clause 27, but only to the extent necessary for, and for the sole purpose of, the Sub-contractor performing obligations under this Agreement for and on behalf of the Registrar, pursuant to a Sub-contractor Agreement contemplated by clause 21.

27.2 Background Material

- (a) If a party supplies to the other party any Background Materials, the supplying party authorises the receiving party to, for the sole purpose of fulfilling its obligations or exercising its rights under this Agreement, use and reproduce those Background Materials in whole or part including to create or develop Developed Material.
- (b) The parties acknowledge that this Agreement does not transfer ownership of any Intellectual Property Rights comprised in any Background Material.

27.3 Developed Material

- (a) Subject to clause 27.2, any Intellectual Property Rights in Developed Material are owned by auDA.
- (b) Subject to clause 27.2, and without reducing the effect of clause 27.3(a), if any Intellectual Property Rights are held by the Registrar in the Developed Materials:
 - (i) the Registrar must assign, transfer and set over to auDA all of its right, title and interest in and to the Developed Materials (or procure such assignment, transfer and set over from any other party, including a Sub-contractor, to give effect to this clause 27.3(b)(i)); and
 - (ii) auDA grants the Registrar a non-exclusive and non-transferable licence to use the Developed Material for the sole purpose of performing its obligations under this Agreement during the Term (noting that the provisions of clause 27.1(c) apply to this clause 27.3(b)(ii).

27.4 Use of auDA Accredited status, names, logos and online content

- (a) Subject to clause 27.4(b), auDA grants to the Registrar (but not to any of its Personnel or any of its Sub-contractors) a non-exclusive, non-transferable, worldwide, royalty-free licence to:
 - (i) represent that it is auDA Accredited as a registrar for .au ccTLD and the Designated Namespaces;

- (ii) use any logo specified or provided by auDA to indicate that the Registrar is auDA Accredited as a registrar for the Designated Namespaces; and
 - (iii) link to pages and documents within the auDA Website, provided they are not framed by, or presented with, any other materials and used solely for the purposes of associated with providing Registrar Services.
- (b) The Registrar must, in relation to any intellectual property licensed under clause 27.4(a):
- (i) only use that intellectual property in the form specified by auDA, and must not change, modify or alter that intellectual property in any way;
 - (ii) report any infringement or suspected infringement of that intellectual property to auDA immediately after being made aware of that infringement or suspected infringement; and
 - (iii) not deal with that intellectual property in any manner likely to interfere with its valid registration, including trade mark registrations of auDA logos.
- (c) For clarity, a Registrar is not permitted to sub-license any rights granted to it under clause 27.4(a) to any other person (including a Sub-contractor) and a Sub-contractor is not permitted to do any of the things referred to in clause 27.4(a).

27.5 Intellectual Property Rights warranty

The Registrar warrants to auDA that the:

- (a) Registrar has not granted to any other person rights inconsistent with the rights granted by this Agreement;
- (b) performance of its obligations under this Agreement do not, and will not, infringe the Intellectual Property Rights of any person;
- (c) Registrar is entitled to validly license and assign all Intellectual Property Rights as required or contemplated by this Agreement; and
- (d) Registrar has not received notice of, and is not otherwise aware of, any Third Party Claim alleging infringement of any Intellectual Property Rights of any Third Party which may affect the Registrar's ability to perform its obligations, or auDA's interests or rights, under this Agreement (**Infringement Claim**).

27.6 Indemnity

The Registrar indemnifies auDA, its Related Entities and its Personnel against all and any Liability, damage, charge, reasonable expense, outgoing or cost (including legal costs and defence or settlement costs) directly or indirectly arising out of, or in connection with any breach of clause 23, clause 27.5 or any past, future or existing Infringement Claim.

27.7 Infringement Claims

If the Registrar is notified of, or otherwise becomes aware of, an Infringement Claim:

- (a) the Registrar must promptly notify auDA of the Infringement Claim or suspected Infringement Claim;
- (b) upon auDA's request, the Registrar must (at its own cost) use its best efforts to protect auDA's interests under this Agreement, including defending a claim or commencing legal proceedings; and

- (c) without prejudice to auDA's other rights or remedies under this Agreement or otherwise, where the effect of the Infringement Claim reduces auDA's or the Registrar's ability to fully benefit from the Registrar Services in any material way, such circumstance will be an Event of Default by the Registrar.

28. Force majeure

28.1 Giving of notice

If a party to this Agreement is affected by a Force Majeure Event that party must as soon as practicable give the other party written notice of that fact including:

- (a) reasonable particulars of the Force Majeure Event;
- (b) details of the obligations affected by it and the extent to which they are affected;
- (c) an estimate of its likely duration; and
- (d) the steps taken to rectify it.

28.2 Liability for force majeure

Subject to clause 28.3, if a Force Majeure Event occurs, the obligations under this Agreement of the party giving the notice are suspended, to the extent to which they are affected by the Force Majeure Event, for the duration of the Force Majeure Event.

28.3 Effort to overcome

- (a) A party who has given notice of a Force Majeure Event under clause 28.1 must:
 - (i) use its reasonable endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as reasonably possible; and
 - (ii) keep the other party regularly informed as to the steps or actions being taken to achieve this.
- (b) Nothing in this clause 28.3 requires a party to settle any industrial dispute against its will.

28.4 Alternative arrangements

- (a) If a party fails to perform obligations because of a claimed Force Majeure Event, any other party may (but is not obliged to) make alternative arrangements for the performance of those obligations, whether by another person or otherwise for so long as the Force Majeure Event continues.
- (b) The party making the alternative arrangements:
 - (i) must notify the other party of the alternative arrangements; and
 - (ii) is not liable in any way to the other party in respect of the alternative arrangements.

28.5 Right of termination

If a Force Majeure Event continues for more than 90 consecutive Days, any party to whom notice has been given under clause 28.1 may terminate this Agreement without cause in accordance with clause 32.6.

29. Indemnities

Without limiting auDA's rights (whether under this Agreement or otherwise), the Registrar indemnifies each of auDA and its Related Entities (including its officers, employees or agents) against any Liability, Loss, damage, charge, expense, outgoing or cost arising out of:

- (a) any injury to, or death of a natural person or any Loss of or damage to tangible property caused by breach of this Agreement or any wilful, unlawful or negligent act or omission of the Registrar or its Personnel;
- (b) any wilful, unlawful or negligent act or omission of the Registrar or its Personnel;
- (c) a Claim by a Registrant in relation to a Licence Agreement or provision of, or access to, Registrar Services;
- (d) a Claim by a Third Party, caused or contributed to by a breach of this Agreement by the Registrar;
- (e) a Claim by a Third Party, arising out of or in connection with a Registrant's registration or use of a Licence ;
- (f) any Claim by any Personnel of the Registrar against auDA and its Related Entities (including its officers, employees or agents); and
- (g) any fines, penalties or other similar charges imposed by a Regulatory Authority as a result of any breach of any Law applicable to the Registrar or any of its Personnel,

except the indemnity will be reduced proportionately to the extent that any Liability, damage, charge, expense, outgoing or cost, is caused by auDA or its officers, employees or agents.

30. Limitations of Liability

30.1 Exclusion of Liability

Subject to this clause 30 and to the maximum extent permitted by Law, auDA is not liable to the Registrar or to any other person for any:

- (a) Liability; or
- (b) Consequential Loss,

arising under or in connection with this Agreement, including any Liability that results from any wrongful or negligent act or omission of auDA or any of its Personnel.

30.2 Exceptions

Nothing in this clause 30 limits auDA's Liability with respect to damages for:

- (a) personal injury, including sickness and death;
- (b) breach of confidentiality under clause 26;
- (c) any fraudulent acts or omissions; or
- (d) any reckless or malicious acts.

30.3 Exclusion of implied warranties

Any representation, warranty, condition, guarantee, indemnity or undertaking that would be implied in, or affect, this Agreement by legislation, common law, tort, equity, or by course of performance, dealing, trade, custom or usage is excluded to the maximum extent permitted by Law.

30.4 Non-excludable rights implied by statute

Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on auDA by the Australian Consumer Law or any other applicable Law that cannot be excluded, restricted or modified by agreement.

30.5 Survival of clause

Despite any other provision of this Agreement, this clause 30 survives the expiry or termination of this Agreement.

31. Dispute resolution

31.1 Delivering a Dispute Notice

If any dispute, controversy or claim arises between the parties arising out of, relating to or in connection with this Agreement, including any question regarding its existence, validity or termination (**Dispute**), a party may deliver to the other party a written notice (**Dispute Notice**) which sets out the nature of the Dispute and the relief or remedy that the party seeks.

31.2 Parties must negotiate

During the period of 10 Business Days after delivery of the Dispute Notice, or any longer period agreed in writing by the parties (**Initial Period**), each of the parties must use their reasonable endeavours and act in good faith to resolve the Dispute by discussion and negotiation.

31.3 Referral to mediation – Australian Registrars

If the Registrar is domiciled in Australia and the parties are unable to resolve the Dispute in the Initial Period, then the Dispute must be referred to mediation in accordance with the following:

- (a) The parties must agree on a mediator within 10 Business Days after the end of the Initial Period. If they fail to do so, any party may request the Australian Disputes Centre to appoint a mediator.
- (b) Any mediator agreed by the parties or appointed by the Australian Disputes Centre must be independent and impartial.
- (c) The mediation must be commenced within 20 Business Days after the mediator has been appointed and must be concluded within 30 Business Days after the mediator has been appointed, unless otherwise agreed between the parties.
- (d) The mediation must take place in Melbourne, Australia, and must be conducted in accordance with the Australian Disputes Centre Guidelines for Commercial Mediation operating at the time.
- (e) The parties must in good faith co-operate with the mediator and must comply with requests by the mediator including requests to submit written materials, provide evidence, attend meetings and pay the mediator's fees.

- (f) The parties agree that the mediation will be private and confidential and they undertake not to rely on or introduce as evidence in any arbitral or judicial proceedings, whether or not such proceedings relate to the Dispute that is the subject of the mediation, any matter relating to the mediation (including the existence of the mediation), any settlement agreement, materials created for the purpose of the mediation and documents produced by another party in the mediation except:
- (i) for the purpose of making an application to a court of competent jurisdiction to enforce the settlement agreement;
 - (ii) pursuant to the order of a court of competent jurisdiction; or
 - (iii) if required by the Law of any State which is binding on the party making the disclosure.

31.4 Referral to arbitration – non-Australian Registrars

- (a) If the Registrar is not domiciled in Australia and the relevant Dispute is not resolved by negotiation within the Initial Period or such other period as the parties agree, then the Dispute must be resolved by arbitration in accordance with the United Nations Commission on International Trade Law (**UNCITRAL**) Arbitration Rules which are operating at the time the Dispute is referred to arbitration.
- (b) The seat of arbitration must be Melbourne, Australia.
- (c) The language of the arbitration must be English.
- (d) The number of arbitrators must be one or three.

31.5 Other proceedings

No party may commence any judicial proceedings in relation to the Dispute unless:

- (a) it has complied with any obligation on it under this clause 31;
- (b) those proceedings are commenced for the purpose of enforcing this clause 32 or to seek interlocutory relief; or
- (c) following the procedures in clauses 31.1 to 31.4 would result in a limitation period for a cause of action arising from or relating to the Dispute expiring.

31.6 Continuing obligations

Despite the existence of a Dispute, each party must continue to perform its obligations under this Agreement, including providing the Registrar Services.

32. Rectification, default and termination

32.1 Rectification of breaches

- (a) Without limiting the effect of any Default Notice issued, if a party (**Breaching Party**) breaches any obligation under this Agreement, then the other party (**Non-breaching Party**) may issue a notice to the Breaching Party specifying the nature of the breach (together with all associated details) and requesting rectification of the breach by the Breaching Party (**Rectification Notice**).
- (b) On receipt of a Rectification Notice, the Breaching Party must:

- (i) rectify the breach set out in the Rectification Notice within 30 Days of receipt of the Rectification Notice; and
- (ii) demonstrate, to the Non-breaching Party's satisfaction, acting reasonably, how such rectification has been undertaken.

32.2 Events of Default

In this Agreement, **Event of Default** means:

- (a) in relation to a party, any of the following events:
 - (i) the party commits a breach of this Agreement and fails to remedy the breach in accordance with clause 33.1;
 - (ii) the party commits a breach of this Agreement that is not capable of being remedied;
 - (iii) an Insolvency Event occurs in relation to the party;
 - (iv) a notice of deregistration of the party is given under sections 601AA(5) or 601AB(5) of the Corporations Act;
 - (v) any amount due and payable by the party under this Agreement is in arrears for 30 Days after it is due or formal request or demand has been made;
 - (vi) any representation, warranty or statement made or repeated by the party in or in connection with this Agreement is untrue or misleading in any material respect (including by omission) when so made or repeated;
 - (vii) the party becomes unable to perform all of its obligations and take all actions contemplated under this Agreement;
 - (viii) a material provision of this Agreement that purports to impose an obligation on the party is or becomes void, voidable, illegal or unenforceable or of limited effect (other than because of equitable principles or Laws affecting creditor's rights generally); or
 - (ix) the party ceases or threatens to cease to carry on business or a substantial part of it; and
- (b) in relation to the Registrar, any of the following events (in addition to those set out in clause 33.2(a)):
 - (i) the Registrar fails to satisfy the Accreditation Criteria (in whole or in part) at any time during the Term;
 - (ii) the Registrar becomes subject to a change of Effective Control;
 - (iii) the Registrar breaches clause 11.3(e) and permits, enables or facilitates the unauthorised access, use or sharing of one or more Registry Connections with a Third Party;
 - (iv) the Registrar breaches clause 11.3(f) by failing to comply or failing to procure its potential assignee comply, with the terms of this Agreement;
 - (v) the Registrar breaches clause 11.3(g) and breaches a term of auDA's Consent to the Registrar's sharing of one or more Registry Connections in relation to a Corporate Transaction;
 - (vi) the Registrar fails to comply with any obligation set out in clause 14 (regarding information security);

- (vii) by failing to provide Information, documents, records or data requested by auDA under clause 19.4 within 5 Business Days of the auDA's request;
- (viii) an Infringement Claim reduces auDA's ability to fully benefit from the Registrar Services (in accordance with clause 27.7(c)); or
- (ix) if the Registrar or any of its officers (as defined in the Corporations Act) or director is convicted of an offence involving fraud or dishonesty.

32.3 Default notice

If an Event of Default, other than an Insolvency Event, occurs in relation to a party (**Defaulting Party**), the other party (**Non-defaulting Party**) may give a notice to the Defaulting Party specifying the Event of Default (**Default Notice**) and requiring the Defaulting Party to remedy the default within 10 Business Days of the Default Notice being given to the Defaulting Party.

32.4 Consequences of default

Following an Event of Default, the Non-defaulting Party may, by notice in writing to the Defaulting Party do all or any of the following:

- (a) demand that all moneys actually or contingently owing under this document are immediately due and payable by the Defaulting Party (and the Defaulting Party must immediately repay those moneys);
- (b) demand that the Defaulting Party must pay to the Non-defaulting Party interest at the Prescribed Rate in accordance with clause 18.3, calculated based on the amount overdue during the period of default (and the Defaulting Party must immediately pay such interest);
- (c) declare that the obligations of the Non-Defaulting Party under this document cease and the Non-Defaulting Party is no longer obliged to perform any obligations under this document;
- (d) if the Defaulting Party is the Registrar, auDA may demand that the Registrar pays all reasonable expenses incurred by auDA as a result of any breach of this Agreement by the Registrar and the service of notices as required by this clause, and the Registrar must immediately pay those expenses; or
- (e) terminate this Agreement in accordance with clause 32.5.

32.5 Termination for default

If a Defaulting Party:

- (a) receives a Default Notice and does not remedy the default or otherwise comply with the notice within the relevant period referred to in clause 32.3;
- (b) receives a Default Notice for a breach of that is incapable of remedy;
- (c) receives a Default Notice on 3 occasions in any period of 12 months (whether or not such defaults are remedied); or
- (d) is the subject of an Insolvency Event,

then subject to any stay or restriction which applies because of section 415D, 434J, 440B or 451E of the Corporations Act, the Non-defaulting Party, without limiting its other rights and remedies, may terminate this Agreement by written notice to the Defaulting Party with immediate effect.

32.6 Termination without cause

A party may terminate this Agreement at any time, without reason or Liability, by giving the other party at least 60 Days written notice.

32.7 Termination by auDA

In addition to any other termination right it has under this Agreement, auDA may terminate this Agreement, in whole or in part and with immediate effect, by written notice to the Registrar if one or more of the following occur:

- (a) the breach committed by the Registrar, and relied upon by auDA to terminate this Agreement, relates to an act or omission of the Registrar which is likely (in auDA's reasonable opinion) to materially adversely affect the security, integrity or stability of the DNS or the Registry;
- (b) the ICANN Sponsorship Agreement is terminated;
- (c) the Australian Government Endorsement is revoked or terminated;
- (d) the Registry-Registrar Agreement expires or terminates;
- (e) auDA becomes entitled to exercise its right under clause 14.2(b)(iv); or
- (f) a repudiation of all or any part of the Agreement by the Registrar.

32.8 Fees and compensation

- (a) The parties acknowledge and agree that the Fees paid by the Registrar to auDA under this Agreement are not refundable, regardless of how and when any such termination may occur.
- (b) Despite clause 32.8(a), if this Agreement is terminated without cause by auDA in accordance with clause 32.6, then the Registrar may be entitled to a one-off compensation payment to be determined in accordance with Item 4 of Schedule 1 (less any amounts owing by the Registrar to auDA at the relevant time).

32.9 Rights and obligations on termination

If this Agreement is terminated for any reason, in addition to and without prejudice to any other rights, powers or remedies provided by Law, each party:

- (a) is released from its further obligations under this Agreement, except those provisions of this Agreement which are expressly intended to survive termination;
- (b) must return or destroy all Confidential Information of the other party in accordance with clause 26.4; and
- (c) retains the rights it had against the other party in respect of any past breach.

32.10 Registrar's obligations on termination

If this Agreement is terminated, then the Registrar must on receipt of a request from auDA, do all things necessary, including without limitation:

- (a) provide all necessary information to auDA; and
- (b) cooperate in good faith with auDA and to comply with all reasonable and lawful directions of auDA,

to ensure that all its Registrants migrate their Licence Agreements with respect to Domain Name registration services to another registrar of their choice (or as directed by auDA), with minimum disruption or inconvenience to the Registrants, and by no later than the date this Agreement terminates.

32.11 Survival of clauses

Despite any other provision of this Agreement, this clause 32 (**Default and termination**) and clauses 1 (**Definitions and interpretation**), 16 (**Representations and warranties**), 20 (**GST**), 23 (**Privacy**), 26 (**Confidentiality**), 27 (**Intellectual Property**), 29 (**Indemnities**), 30 (**Limitations of liability**), 31 (**Dispute Resolution**), 34 (**Notices**) and 35 (**General**) survive the expiry or termination of this Agreement.

33. No assignment

33.1 No assignment by the Registrar without consent

The Registrar must not:

- (a) sell, transfer, delegate, assign, licence; or
- (b) mortgage, charge or otherwise encumber,

any right under this Agreement to any person (**Proposed Assignee**), or permit a Proposed Assignee to assume any obligation under this Agreement, without auDA's prior written approval and consent.

33.2 No change of control

The Registrar:

- (a) must ensure that there is no change of Effective Control of the Registrar without auDA's approval; and
- (b) acknowledges and agrees that a change of Effective Control of the Registrar in breach of clauses 11.3(f) or 33.2(a) will be regarded as an Event of Default, whether such change is within or beyond the control of the Registrar.

33.3 Fees and expenses

The Registrar must pay all fees and expenses (including legal fees on a solicitor/own client basis) incurred by auDA in connection with any proposed assignment and the investigation of the Proposed Assignee under this clause 33, whether or not any relevant consent or approval is granted.

33.4 Details

If auDA approves of, and consents to, the assignment of this Agreement under clause 33.1, then at auDA's request the Registrar must promptly deliver to auDA all requested Information about the Proposed Assignee and the assignment including:

- (a) the name, address and occupation (if applicable) of the Proposed Assignee;
- (b) two written references as to financial circumstances of the Proposed Assignee;
- (c) an agreement in a form approved by auDA, executed by the Proposed Assignee, in which the Proposed Assignee agrees to perform the obligations of the Registrar under this Agreement; and

- (d) if required by auDA, a guarantee in a form approved by auDA executed by persons approved by auDA, guaranteeing the performance of the Proposed Assignee's obligations.

33.5 Permitted assignment by auDA

- (a) auDA is permitted to assign, transfer or novate its rights or obligations under this Agreement, in whole or in part, to:
 - (i) any other entity that becomes the Australian Government endorsed authority for, and is recognised by ICANN as the manager of, the applicable .au ccTLD; or
 - (ii) any related body corporate (as defined in the Corporations Act) as part of any corporate restructure or re-organisation of auDA's business,

without the Registrar's consent, and for the purposes of this clause 33.5 and if required by any Law, the Registrar agrees it consents to any such assignment, transfer or novation.
- (b) The Registrar must enter into any documentation required to give effect to any assignment, transfer or novation under this clause 33.5 if required by auDA.

34. Notices

Any notice or other communication to or by a party under this Agreement:

- (a) must be given in accordance with this clause 34;
- (b) may be given by personal service, post or email;
- (c) must be in writing, legible and in English addressed (depending on the manner in which it is given) as shown below:
 - (i) if to auDA:
Address: Level 19, 8 Exhibition Street, Melbourne VIC 3000, Australia
Attention: Chief Executive Officer
Email: ceo@auda.org.au
 - (ii) if to the Registrar, in accordance with the details set out in Item 1 of Schedule 1,
- (d) or addressed in accordance with any updated details last notified by the party to the sender by notice given in accordance with this clause;
- (e) must be signed:
 - (i) in the case of a corporation registered in Australia, by any authorised representative or by the appropriate office holders of that corporation under section 127 of the Corporations Act; or
 - (ii) in the case of a corporation registered outside of Australia, by a person duly authorised by the sender in accordance with the Laws governing the place of registration of that corporation; and
- (f) is deemed to be given by the sender and received by the addressee:
 - (i) if delivered in person, when delivered to the addressee;
 - (ii) if posted, at 9.00am on the third (or seventh, if posted to or from a place outside Australia) Business Day after the date of posting to the addressee whether delivered or not; or

- (iii) if sent by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purposes of this clause),

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (addressee's time), it is deemed to have been received at 9.00am on the next Business Day.

35. General

35.1 Time of the essence

In this Agreement, time is of the essence unless otherwise stated.

35.2 Entire understanding

- (a) This Agreement contains the entire understanding between the parties concerning the subject matter of this Agreement and supersedes, terminates and replaces all prior agreements and communications between the parties concerning that subject matter.
- (b) Each party acknowledges that, except as expressly stated in this Agreement, it has not relied on any representation, warranty, undertaking or statement made by or on behalf of another party in relation to this Agreement or its subject matter.

35.3 No adverse construction

No provision of this Agreement is to be construed to the disadvantage of a party solely because that party was responsible for preparing or proposing this Agreement or the provision.

35.4 Further assurances

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Agreement.

35.5 No waiver

- (a) A failure to exercise, a delay in exercising or partially exercising any power, right or remedy conferred on a party by or in respect of this Agreement does not operate as a waiver by that party of the power, right or remedy.
- (b) A single or partial exercise of any power, right or remedy does not preclude a further exercise of it or the exercise of any other power, right or remedy.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

35.6 Remedies cumulative

Except as set out in this Agreement, the powers, rights and remedies under this Agreement are cumulative with and not exclusive of any powers, rights and remedies provided by Law independently of this Agreement.

35.7 Severability

Any provision of this Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction, be:

- (a) read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) severed from this Agreement in any other case,

without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

35.8 Consents and approvals

Unless this Agreement provides otherwise, where anything depends on the consent or approval of a party, then that consent or approval may be given conditionally, unconditionally or withheld, in the absolute discretion of that party.

35.9 No variation

This Agreement cannot be amended or varied except in writing signed by the parties.

35.10 Costs

Each party must pay its own legal costs of and incidental to the preparation and completion of this Agreement.

35.11 Duty

- (a) Any duty (including related interest or penalties) payable in respect of this Agreement or any instrument created in connection with it must be paid by the Registrar.
- (b) The Registrar undertakes to keep auDA indemnified against all Liability relating to the duty, fines and penalties.

35.12 Conflicting provisions

If there is any conflict between the main body of this Agreement and any schedules or annexures comprising it, then the provisions of the main body of this Agreement prevail.

35.13 No merger

Unless otherwise provided in this Agreement, the representations, undertakings, warranties and indemnities of the parties in, or the rights and remedies of the parties under, survive and remain enforceable to the fullest extent (following expiry or termination of this Agreement).

35.14 Operation of indemnities

Unless this Agreement expressly provides otherwise:

- (a) each indemnity in this Agreement is a continuing obligation and survives the completion, expiry or termination of this Agreement;
- (b) each indemnity given by a party in this Agreement is an additional, separate and independent obligation of the party and no one indemnity limits the operation of any other indemnity; and
- (c) a party may enforce and recover a payment under an indemnity in this Agreement before it incurs any expense or makes the payment in respect of which the indemnity is given.

35.15 No right of set-off

Unless this Agreement expressly provides otherwise, a party has no right of set-off against a payment due to another party under this Agreement.

35.16 Relationship of parties

Unless this Agreement expressly provides otherwise, nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

35.17 Counterparts

If this Agreement consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document. A party may sign a counterpart by executing a signature page and electronically transmitting a copy of the signed page to each other party or their authorised representative.

35.18 Governing law and jurisdiction

- (a) This Agreement is governed by and must be construed in accordance with the Laws of the State of Victoria.
- (b) The parties submit to the exclusive jurisdiction of the courts of the State of Victoria and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.
- (c) Each party waives any rights to:
 - (i) object to the venue of any proceedings; or
 - (ii) claim that the proceedings have been brought in an inconvenient forum or that the courts of another place are a more convenient forum,if the proceedings have been brought in a court referred to in clause 35.18(b).

Schedule 1 Particulars

1 Commencement Date

1 January 2025

2 Details (including particulars for service)

Name:	
ACN/ABN:	
Category of Registrar	
Street address:	
Postal Address:	
Email address:	
Nominated Contact:	
Special Licensing Terms:	<i>[insert details around special conditions for the Registrar. By way of example - if the Registrar is Education Services Australia, this should include any particular requirements around any authority required to meet the .edu.au namespace requirements]</i>

3 Security and DNS abuse contacts

auDA:	<u>Security Contact:</u>
	Name: Insert
	Title: Insert
	Email: Insert
	Phone: Insert
	<u>DNS Abuse Contact:</u>
	Name: Insert
	Title: Insert
	Email: Insert
	Phone: Insert
	<u>WHOIS Abuse Contact:</u>
	Name: Insert
Title: Insert	
Email: Insert	
Phone: Insert	

Registrar:	<u>Security Contact:</u>
	Name: Insert
	Title: Insert
	Email: Insert
	Phone: Insert
	<u>DNS Abuse Contact:</u>
	Name: Insert
	Title: Insert
	Email: Insert
	Phone: Insert
	<u>WHOIS Abuse Contact:</u>
	Name: Insert
Title: Insert	
Email: Insert	
Phone: Insert	

4 Insurance details – Required Policies

Insurance Type	Amount
Workers Compensation	As required by law
Public and products liability	Not less than \$10 million per annum for any claim
Business interruption and accidental damage cover	Acting reasonably, an appropriate level given Registrar’s business and having regard to what a prudent provider of Registrar Services would maintain
Business insurance (including contents, fire, damage, perils, burglary)	
Cyber Insurance	
Any other insurances required by auDA in writing from time to time	

5 Designated Namespaces

The .au ccTLD together with the following second level domain name spaces, which together constitute the **Designated Namespaces**:

.au (.au direct), .com.au, .net.au, .org.au, .asn.au, .id.au, .wa.au, .nt.au, .sa.au, .qld.au, .nsw.au, .act.au, .vic.au, .tas.au.

6 Fees

The Registrar must pay the Fees applicable to the relevant category that applies to it, as set out in Part 1 above.

Category	Domains under licence/management	Annual Fees payable plus GST
Category 1	Fewer than 100,000	AUD \$3,000
Category 2	100,001 to 500,000	AUD \$3,000
Category 3	More than 500,000	AUD \$3,000

Fees applicable for additional Registry Connections:

Quantity	Applicable fees plus GST
For each group of up to 10 additional Registry Connections	AUD \$3,000

7 Maximum compensation for termination without cause

The below is the maximum one-off compensation payable to a Registrar in the event this Agreement is terminated without cause by auDA. The amount applicable to the Registrar is the amount that applies to the category that applies to the Registrar as set out in Part 1 above.

Category	Domains under licence/management	Annual Fees payable plus GST
Category 1	Fewer than 100,000	AUD \$3,000
Category 2	100,001 to 500,000	AUD \$3,000
Category 3	More than 500,000	AUD \$3,000

Schedule 2 Mandatory provisions for the Licence Agreements

All Licence Agreements must contain the following provisions:

1 auDA and Registrar's Agency

1.1 In this Agreement:

- (a) **auDA** means .au Domain Administration Limited ACN 079 009 340, the .au domain names administrator;
- (b) **Registrar Rules** means the document titled ".au Domain Administration Rules:Registrar" as ratified by auDA and amended from time to time; and
- (c) **Licensing Rules** means the document titled ".au Domain Administration Rules: Licensing" as ratified by auDA and amended from time to time.

1.2 Solely to the extent this Agreement purports to grant a right or benefit to auDA (who is not a contracting party to this Agreement), if that right or benefit is also granted to the Registrar, then the Registrar may (whether on behalf of auDA and/or in its own capacity) enforce the obligation corresponding to the auDA's right, for auDA's benefit. For the purposes of such enforcement, the obligation corresponding to auDA's right or benefit is taken to be owed to auDA.

2 auDA Published Policies

2.1 In this clause, **auDA Published Policies** means those specifications and policies established and published by auDA from time to time at <https://www.auda.org.au/policies>, and includes the Registrar Rules and the Licensing Rules.

2.2 The Registrant must comply with all auDA Published Policies, as if they were incorporated into, and form part of, this Agreement. In the event of any inconsistency between any auDA Published Policy and this Agreement, then the auDA Published Policy will prevail to the extent of such inconsistency.

2.3 The Registrant acknowledges that under the auDA Published Policies:

- (a) there are mandatory terms and conditions that apply to all licences, and such terms and conditions are incorporated into, and form part of, this Agreement; and
 - (b) the Registrant is bound by, and must submit to, the .au Dispute Resolution Policy; and
 - (c) auDA may delete or cancel the registration of a .au licence.
-

3 auDA's Liabilities and Indemnity

3.1 To the fullest extent permitted by law, auDA is not liable to Registrant for any Consequential Loss or damage suffered by Registrant arising from, as a result of, or otherwise in connection with, any

wrongful or negligent act or omission of auDA, its officers, employees, agents or contractors, sub-contractors and professional advisers.

3.2 For the purposes of this Item 3, "Consequential Loss" means any indirect, incidental, special or consequential loss or damage, pure economic loss damages and exemplary or punitive damages, including loss or damage in relation to loss of use, loss of production, loss of revenue, loss of profits or anticipated profits, loss of business, loss of business opportunity, loss of contract, loss of reputation or opportunity, business interruptions of any nature, loss of data, data corruption rectification costs or loss or damage resulting from wasted management time.

3.3

Schedule 3 Accreditation Criteria

1 General

- 1.1 All Registrars must satisfy the Accreditation Criteria set out in this Schedule at all times during the Term of the Agreement. The Accreditation Criteria is intended to ensure that Registrars operate in a way that is consistent with auDA's responsibility to ensure the:
- (a) stable, secure and reliable operation of the Australian DNS, including its security and integrity;
 - (b) efficient and effective operation of the licence registration system; and
 - (c) rights and interests of Registrants.
-

2 Corporate requirements

- 2.1 If it is an Australian company, the Registrar must be registered to carry on business in Australia in accordance with the Corporations Act.
- 2.2 If it is a non-Australian domiciled company, the Registrar must be registered and validly existing under the applicable Laws of the jurisdiction under which it is registered, incorporated and operating.
- 2.3 Australian companies must hold an Australian Company Number (**ACN**) and Australian Business Number (**ABN**).
- 2.4 Non-Australian domiciled companies must hold an Australian Registered Body Number (**ARB**) and ABN, and must have an Australian address for service of notices for the purposes of this Agreement and general Law.
- 2.5 The Registrar must be registered with the Australian Taxation Office (**ATO**) for GST.
- 2.6 The Registrar must be required by Law to comply with the Privacy Act, or have elected to be treated as an "organisation" in accordance with section 6EA(2) of the Privacy Act, and must not have withdrawn or revoked such election.
- 2.7 The Registrar must obtain and maintain the insurance policies specified in clause 19.3 of this Agreement.
- 2.8 The Registrar must have a valid and subsisting Registry-Registrar Agreement in place with the Registry Operator.
- 2.9 The Registrar's satisfaction of each requirement of this paragraph 2 is a question of fact and will be verified by auDA objectively.
-

3 Operational requirements

- 3.1 The Registrar must demonstrate knowledge of the Australian DNS and the Published Policies.
- 3.2 The Registrar must have the capability to interact with the Registry using EPP or a web interface, in accordance with all technical specifications prescribed by the Registry Operator.
- 3.3 The Registrar must have the capability to provide services to Registrants in accordance with this Agreement and the Published Policies.
-

- 3.4 The Registrar must have a sufficient number of staff, and adequate systems and procedures, to handle:
- (a) policy compliance checks for Domain Name registrations;
 - (b) customer billing;
 - (c) all customer inquiries and support services, including requests for changes in registration data; and
 - (d) customer complaints, including maintaining a free and accessible complaints process.
- 3.5 The Registrar must be able to maintain electronic copies of all transactions, correspondence and communications with auDA, the Registry Operator and Registrants for the Term.
- 3.6 The Registrar must be able to provide information systems security procedures to prevent systems hacks, break-ins, data tampering (or similar compromises of systems security) and any other disruptions to its business.
- 3.7 The Registrar must have at least one nominated contact person to liaise on all matters with auDA, and such person must be recognised as holding a senior management role in the Registrar's business.
- 3.8 In determining whether the Registrar satisfies the requirements of this paragraph 3, auDA will evaluate the Registrar's ability to meet the operational requirements based on accepted industry practice and benchmarks, and may take into account any factors it sees fit to do so, including the type and size of the Registrar's business and operations.
-

4 Security requirements

- 4.1 The Registrar must hold a current:
- (a) effective "Information Security Management System" in compliance with ISO 27001; or
 - (b) other equivalent recognised security standard or framework expressly approved in writing by auDA for this purpose.
- 4.2 The Registrar must implement and maintain any prescribed Minimum Controls as advised by the auDA.
- 4.3 The Registrar's compliance with the security requirements of this paragraph 4 is a question of fact and will be verified by auDA objectively.

Schedule 4 Minimum Controls

1 Multi-factor authentication

- 1.1 Multi-factor authentication must be enforced for at least the following:
- (a) Registrar customers
 - (i) At login to customer interfaces with access to Registrar Services
 - (ii) As part of the customer submitting any change to Registrant Data
 - (b) Registrar staff
 - (i) All interfaces that provide any level of access to Registrant Data
 - (ii) Email, Telephone and SMS are not to be used as forms of multi-factor authentication
-

2 Encryption at rest and in transit of Registrant Data

- 2.1 All Registrant Data must be encrypted at rest and during transit following the Australian Cyber Security Centre (ACSC) guidance on cryptographic controls as outlined in the ACSC's ISM (<https://www.cyber.gov.au/ism>). This includes:
- (a) All internal and external situations in which Registrant Data flows over a network connection (including between databases and app servers)
 - (b) Server/Virtual Machine/Cloud instance storage
 - (c) Removable media
 - (d) Registrant Data transferred via email
 - (e) Backup media
- 2.2 Authentication information (internal and external) must be stored using non-reversible cryptographic hashes or equivalent. Where this is not possible, for example because the authentication data needs to be retrieved (e.g. the EPP authInfo password) then the information must be stored in database tables in an encrypted form.
-

3 Protection from Malware, Viruses and Phishing Attacks

- 3.1 Protection against malware, viruses and phishing must be in place including:
- (a) Host based anti-virus and anti-malware protections
 - (b) Network based anti-virus and anti-malware protections
 - (c) Monitoring and centralised alerting of malware detection, system changes and suspicious activity
 - (d) Filtering of known malicious domains and websites
 - (e) Scanning of file uploads

- (f) Scanning of web traffic
 - (g) Blocking access to known botnet command and control endpoints
 - (h) Scanning email for malware
 - (i) Anti-phishing controls
-

4 Segregation of critical systems that process Registrant Data

- 4.1 Segregation controls must be in place including:
- (a) Any host that has the capability to communicate with the Registry must be segregated into its own subnet
 - (b) Database and other repositories that hold Registrant Data must be segregated into their own subnet
 - (c) Default-deny firewalls or equivalent must be used to control traffic entering or leaving a secure subnet
 - (d) Hosts holding, processing or responsible for administering systems that hold or process Registrant Data must be set for default-denied access to the Internet and utilise an explicit whitelist only
 - (e) Workstations used to administer systems must not be used for web browsing, email or general activities
-

5 Patch Applications

- 5.1 Technical vulnerability management controls (detection and identification of vulnerabilities and patch management procedures) must be in place on hosts that process Registrant Data, including alerting of vulnerabilities that go unpatched with escalation to management.
-

6 Application Whitelisting

- 6.1 Application whitelisting must be in place on hosts holding, processing or responsible for administering systems that hold or process Registrant Data.
-

7 Access Control and authentication of users accessing systems with Registrant Data

- 7.1 Access control systems must be in place that detect, and where feasible prevent, unauthorised changes to Registrant Data (prevent changes not requested by the Registrant). The access control policy and corresponding technical controls must implement the following:
- (a) Restrict administrative privileges
 - (b) Need to know basis only
 - (c) Identification and authentication of those requesting access
 - (d) Validation of authorisation to access
-

- (e) Everything is forbidden unless explicitly permitted
 - (f) Approval procedures for allocation & changes to access
 - (g) Yearly auditing of access and records.
-

8 Security Incident Management

- 8.1 Any event that affects or has the potential to affect the confidentiality, integrity or availability of Registrant Data is to be classified as an information security incident.
 - 8.2 A formal procedure and controls must be in place to prepare for, detect and then respond to information security incidents. This procedure must include requirements that the organisation must immediately give auDA notice of any security breaches.
 - 8.3 The formal information security incident process must include a root cause analysis mechanism with mitigations assigned priorities and action items tracked to completion. Full records must be maintained.
-

9 Event Logs for hosts processing Registrant Data

- 9.1 All relevant assets must keep logs of all activities which must include (where relevant):
 - (a) Identifying information of the event (such as IP Address, username, device details)
 - (b) Details of the event
 - (c) Timestamp of the event
- 9.2 Logs must be shipped to a centralised location and further analysed for patterns / issues.
- 9.3 Logs must be subject to disaster recovery processes.
- 9.4 Logs related to data security incidents must be made available to auDA upon request.

Schedule 5 Dictionary and Interpretation

1 Dictionary

The following definitions apply in this Agreement, unless the contrary intention appears:

ACSC means the Australian Cyber Security Centre.

.au ccTLD means the country code Top Level Domain for Australia.

Accreditation Certificate means a certificate in writing issued by auDA to the Registrar which certifies that the relevant Registrar is auDA Accredited.

Accreditation Criteria means the criteria set out in Schedule 3, together with any other criteria notified by auDA to the Registrar from time to time which auDA deems is reasonably necessary for the Registrar to be auDA Accredited under the terms of this Agreement.

Affiliate, in relation to a person, means:

- (a) any officer, manager, employee, agent or consultant of the person (**Relevant Person**); and
- (b) any Relative (including a spouse, domestic partner, immediate family member or household member), or spouse of such a Relative of a Relevant Person.

Agreement means this agreement including the background, any schedules and any annexures.

Approved Application has the meaning given in clause 6.3(a)(i).

auDA Accreditation means the process by which the relevant Registrar is issued with an Accreditation Certificate in accordance with clause 11.

auDA Accredited means a Registrar that has:

- (a) satisfied the Accreditation Criteria;
- (b) satisfactorily passed the Interface Tests, in respect of the Registry Data and Designated Namespaces (as required by auDA at the relevant time); and
- (c) been issued with an Accreditation Certificate.

auDA Constitution means the constitution of auDA as adopted from time to time in accordance with its terms and published on the auDA Website.

auDA Website means <https://www.auda.org.au/>, or any other website auDA adopts as its official website from time to time during the Term.

Australian Consumer Law means the provisions set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Australian Government Endorsement means the Australian Government's formal endorsement of and agreement with auDA as the appropriate body to hold the delegation of authority by ICANN for administrative authority of the .au ccTLD issued from time to time, as evidenced at the Commencement Date, entitled Terms of Endorsement for auDA (available <https://www.auda.org.au/about-auda/about-au-domain-administration>).

Australian Internet Community means those users and suppliers of services via the Internet who are based in Australia.

Australian Presence has the meaning given in the Licensing Rules.

Authorisation means:

- (a) an authorisation, consent, right, certificate, licence, permit, declaration, exemption, notarisation or waiver, however described (including any renewal or partial renewal); and
- (b) any authorisation or consent regarded as given by a Regulatory Authority where, in relation to something that can be prohibited or restricted by Law if the Regulatory Authority takes action within a specified period, that period expires without that action being taken.

Background Material means any Information or material in which a party holds Intellectual Property Rights that are provided (whether before or after the date of this Agreement) by or on behalf of that party to the other party in the course of or in relation to fulfilling its obligations or exercising its rights under this Agreement.

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne, Australia.

Category 1 Incident means a Cyber Security Incident that:

- (a) is occurring, has occurred or is imminent in connection with the Critical Domain Name System Asset; and
- (b) has had, is having, or may have a material impact on the availability of the Critical Domain Name System Asset.

Category 2 Incident means a Cyber Security Incident that:

- (a) has occurred, is occurring or is imminent in connection with the Critical Domain Name System Asset; and
- (b) has had, is having, or is likely to have a relevant impact (as that term is defined in the SOCI Act) on the Critical Domain Name System Asset; and
- (c) is not a Category 1 Incident.

Category 3 Incident means a security incident that has occurred, is occurring or is likely to occur with respect to any Registry Data and is not a Category 1 or a Category 2 Incident, including a:

- (a) Data Breach; or
- (b) Security Weakness.

ccTLD means the country code top level domain.

Claim includes a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained,

immediate, future or contingent, whether based in contract, tort or statute and whether involving a Third Party or a party to this Agreement or otherwise.

Commencement Date has the meaning given to that term in Schedule 1 (Particulars).

Commissioner means the Information Commissioner appointed under the *Australian Information Commissioner Act 2010* (Cth).

Confidential Information means in, relation to a party, information that is by its nature confidential, is designated by that party as confidential, or the other party knows or ought reasonably to know is confidential and includes including any information relating to the financial affairs, assets or liability of a party, or any information relating to the internal management of a party, its Personnel, policies, plans, strategies, customers, suppliers, products or services. Confidential Information does not include information or material which:

- (a) is or becomes generally known to the public other than through a breach of this Agreement;
- (b) at the time it was first disclosed to a party, was already in that party's lawful possession;
- (c) is developed independently by a party; or
- (d) is disclosed to a party by a Third Party entitled to disclose it.

Consent has the meaning given to it in clause 11.3(g).

Consequential Loss means any Loss or damage which, whether or not it may reasonably be supposed to be in the contemplation of the parties at the Commencement Date as a probable result of the relevant breach or event, is not a Loss or damage that may fairly and reasonably be considered to arise naturally (that is, in the usual course of things) from the breach or other act or omission. Consequential Loss does not include:

- (a) costs of assessing, remedying, responding to or mitigating a breach of this Agreement (including the costs of procuring replacement services or replacing, repairing or recreating any materials or other assets that have been lost, destroyed or damaged as a consequence of the breach);
- (b) costs of notifying, communicating or compensating customers or other third parties affected by a breach of this Agreement;
- (c) Third Party claims resulting from a breach of this Agreement;
- (d) fines or penalties resulting from any breach of Law as a result of a breach of this Agreement;
- (e) cost of any corrective action undertaken by a party further to a regulatory action or notice to comply as a result of a breach of this Agreement;
- (f) time and related expenses and overhead (including travel, lodging, wages) for Personnel who are working on corrective actions as a result of a breach of this Agreement;
- (g) any costs (including holding or delay costs) incurred by auDA in relation to any other contractor, consultant or supplier, where those costs are attributable to a delay caused by an act or omission of the Registry Operator under this Agreement;
- (h) any loss associated with the loss or corruption of Registry Data and any costs associated with recovering or repairing any such Registry Data; or
- (i) legal fees, including as calculated on a full indemnity basis.

Contract Year means each 12 month period starting on the Commencement Date or an anniversary of the Commencement Date.

Corporate Transaction means:

- (j) the Registrar's amalgamation, merger or consolidation with or into any other person; or
- (k) the effecting of any contract, arrangement or understanding under which:
 - (i) the Registrar's assets or liabilities are transferred to or assumed by another person; or
 - (ii) another person's assets or liabilities are transferred to or assumed by the Registrar,whether by dealing in the shares of the Registrar or any other person, the sale and purchase (or otherwise the transfer) of assets, or any other similar transaction.

Corporations Act means the *Corporations Act 2001* (Cth).

Critical Domain Name System has the meaning defined in the SOCI Act, and specified further in the Security of Critical Infrastructure (Definitions) Rules (LIN 21/039) 2021.

Critical Domain Name System Asset means the .au ccTLD system which includes the following infrastructure, assets and systems that are critical to the administration of an Australian DNS:

- (a) the Registry Database;
- (b) the public WHOIS service (<https://whois.auDA.org.au/>);
- (c) the .au top level authoritative DNS name servers; and
- (d) the following second level authoritative DNS name servers:
 - (i) .com.au;
 - (ii) .net.au;
 - (iii) .org.au;
 - (iv) .asn.au;
 - (v) .id.au;
 - (vi) .edu.au; and
 - (vii) .gov.au,

unless the Critical Domain Name System asset for which auDA is the responsible entity is defined under the SOCI Act in a different manner, in which case that definition will apply.

Cyber Security Incident has the meaning given to that term in the SOCI Act.

Data Access Records the meaning given to that term in clause 14.5(b).

Data Breach means any event that has the potential to, or actually does, impair, compromise, damage or cause the loss of in any manner, the confidentiality, reliability, integrity, value or assurance of the Registry Data or any other data in connection with this Agreement.

Days means calendar days.

Default Notice has the meaning given to it by clause 32.3.

Designated Namespaces means the second level domain name spaces set out, referred to, or otherwise described, in Item 2 of Schedule 1.

Developed Material means material developed:

- (a) by or on behalf of the Registrar for auDA, including any reports and records prepared by the Registrar under this Agreement; or
- (b) commissioned by auDA for the purposes of this Agreement (and agreed in writing by the parties).

Dictionary means the dictionary in section 1 of Schedule 5 (Dictionary and Interpretation).

Disclosing Party means the party to whom Information belongs or relates

Dispute has the meaning given in clause 31.1.

Dispute Notice has the meaning given to that term in clause 31.1.

DNS means the domain name system.

DNS Abuse has the meaning given to that term in clause 14.8(a)(ii) (c).

DNS Abuse Contact has the meaning given to that term in clause 14.8(a)(ii) and refers to the contacts set out in Schedule 1 (Particulars).

Domain Name means a unique identifier consisting of alphanumeric characters registered in a Designated Namespace and recorded, or to be recorded, in WHOIS Data.

Effective Control means, subject to the Published Policies:

- (a) in respect of a company incorporated pursuant to the provisions of the Corporations Act:
 - (i) control of a majority of the board of directors; or
 - (ii) control of more than 50% of the voting rights that can be voted in a general meeting of the members; or
 - (iii) control of the disposal of more than 50% of the issued share capital,and includes the exercise of such control by a person as a result of that person having a relevant interest (as defined in the Corporations Act) so that such person, either alone or with an associate (as defined in the Corporations Act) of that person can exercise the relevant control; and
- (b) in all other cases, has the meaning attributed to the term by auDA in the Published Policies.

Eligible Data Breach has the meaning given in the Privacy Act.

Endorsement and Delegation has the meaning given to it in clause 3.1.

EPP means the Extensible Provisioning Protocol, being an XML based protocol used by the registrars and registries in managing domain names and other elements in a shared registry system environment.

Event of Default has the meaning given in clause 32.3.

Fees means the fees payable by the Registrar to auDA each Contract Year as set out in Item 3 of Schedule 1.

Financial Market has the meaning given to that term in the Corporations Act.

Force Majeure Event means any act, event or cause, other than a lack of funds, including:

- (a) an act of God, peril of the sea, accident of navigation, war, sabotage, riot, act of terrorism, insurrection, civil commotion, national or State emergency (whether in fact or law), martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the party concerned), epidemic, pandemic, public health emergency, quarantine, disruptions to supply chain, radiation or radioactive contamination; or
- (b) an action or inaction of a Regulatory Authority, including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order,

to the extent that the act, event or cause directly or indirectly results in a party being prevented from or delayed in performing one or more of its material obligations under this Agreement (other than a payment obligation) and that act, event or cause is beyond the reasonable control of that affected party.

Further Term has the meaning given in clause 4.2.

Government Agency means any government or any public, statutory, or judicial body, entity, department or authority established under a law of the Commonwealth of Australia, or State or Territory of the Commonwealth of Australia.

Government Authority includes any governmental or semi-governmental or local government authority, administrative or judicial board, tribunal or court, department, commission, public authority, Minister, statutory corporation, authority or instrumentality.

GST means goods and services tax under the GST Law.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.

GST Amount has the same meaning given to that term in clause 20.3.

GST Law the same meaning given to that term in the GST Act.

ICANN means the Internet Corporation for Assigned Names and Numbers.

ICANN Sponsorship Agreement means the .au ccTLD Sponsorship Agreement executed on 25 October 2001 by ICANN and auDA, under which ICANN recognises auDA as the manager of the .au ccTLD as contemplated by the Australian Government Endorsement, or any replacement of the same.

Information means any information, whether oral, graphic, electronic, written or in any other form, including:

- (a) forms, memoranda, letters, specifications, processes, procedures, statements, formulae, technology, inventions, trade secrets, research and development information, know how, designs, plans, photographs, microfiche, business records, notes, accounting procedures or financial information, sales and marketing information, names and details of customers, suppliers and agents, employee details, reports, drawings and data;
- (b) copies and extracts made of or from that information and data, whether translated from the original form, recompiled, partially copied, modified, updated or otherwise altered; and
- (c) samples or specimens (if any) disclosed either before or after execution of this Agreement.

Infringement Claim has the meaning given to it in clause 27.5(d).

Initial Expiration Date means 30 June 2028.

Initial Period has the meaning given to it in clause 31.2.

Initial Term means the period starting on the Commencement Date and ending on the Initial Expiration Date.

Insolvency Event means the occurrence of any one or more of the following events in relation to a party:

- (a) an order is made that it be wound up or that a provisional liquidator or receiver or receiver and manager be appointed;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an administrator is appointed to it under sections 436A, 436B or 436C of the Corporations Act;
- (d) a Controller (as defined in section 9 of the Corporations Act) is appointed to it or any of its assets;
- (e) it enters into an arrangement or composition with one or more of its creditors (in their capacities as creditors) and that arrangement or composition is not terminated within 10 Business Days, or an assignment for the benefit of one or more of its creditors (in their capacities as creditors), in each case other than to carry out a reconstruction or amalgamation while solvent;
- (f) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors (in their capacities as creditors), or it proposes a standstill arrangement or composition with one or more of its creditors (in their capacities as creditors) and that standstill, arrangement or composition is not terminated within 10 Business Days;
- (g) it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable Law (including under sections 459C(2) or 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (h) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
- (i) a notice is issued under sections 601AA or 601AB of the Corporations Act and not withdrawn or dismissed within 21 days;
- (j) a writ of execution is levied against it or a material part of its property which is not dismissed within 21 days;
- (k) it ceases to carry on business or threatens to do so; or
- (l) anything occurs under the Law of the Commonwealth, any Australian State or Territory or any other foreign jurisdiction which has a substantially similar effect to any of the events set out in the above paragraphs of this definition.

Intellectual Property Rights means all industrial and intellectual property rights of any kind including copyright (including rights in computer software), trade mark, service mark, design, patent, trade secret, semiconductor or circuit layout rights, trade, business, domain or company names, rights in Confidential Information, know how or other proprietary rights (whether or not any of these are registered and including any application for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

Interface Tests means the registrar/registry interface and other tests conducted by auDA that ensure the Registrar's system can properly interface with the Registry Operator's system for the purpose of processing Registry Data and providing the Registrar Services.

ISO means the International Organization for Standardization.

Key Validation and Integrity Requirements means any provisions contained in a Published Policy that relate to:

- (a) the requirements of the Registrar to verify and validate the identity of any person or Registrant;
- (b) the requirements of the Registrar to have an Australian Presence (or which change what constitutes an Australian Presence);
- (c) the eligibility criteria for licensing the DNS in respect of a Designated Namespace; or
- (d) the integrity, security and stability of the DNS or the Registry.

Law or Laws includes common law, principles of equity and all applicable laws and legislative requirements made by parliament including State, Territory and Commonwealth laws and regulations and other instruments under them.

Liability means all liability, Loss, damage, cost, and expense, charge, outgoing or payment including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties, for which a party is liable, whether or not yet paid or met by that party.

Licence means the licence to use a domain name in the Designated Namespace for a specified period of time.

Licence Agreement means an agreement to be entered into, or renewed, between the Registrar and each Registrant which sets out the terms on which the relevant Registrant is granted a Licence, including any terms prescribed by this Agreement.

Licence Application means any application by a Registrant for a Licence, or the renewal of an existing Licence.

Licensing Rules means the document titled ".au Domain Administration Rules: Licensing", available at <https://www.auda.org.au/policies>, as ratified by auDA and amended from time to time.

Logo means the logo specified by auDA and provided to the Registrar to enable it to indicate that the Registrar is appointed as a supplier of Registrar Services.

Loss means all losses, liabilities, fines, penalties, damages, claims and interest, and all related costs and expenses (including any and all legal costs (on a full indemnity basis), and costs of investigation, litigation, settlement, judgment, appeal, interest and penalties) and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

Minimum Controls has the meaning given to it in clause 14.3(a) and Schedule 4.

Moral Rights means the rights conferred by Part IX of the *Copyright Act 1968* (Cth).

Payment Period means each 12-month period starting 1 July and ending the following 30 June, during the Term.

Personal Information means 'personal information' as defined in the Privacy Act that the Registrar collects, accesses, uses, discloses or otherwise handles in the course of or in connection with this Agreement or the performance of the Registrar Services.

Personnel means, in relation to a party, the officers, employees, contractors, agents, sub- contractors and professional advisers of that party, and includes any officers, employees, contractors, agents and sub-contractors of any Sub-contractor.

Prescribed Rate means the rate that is 2% per annum above the rate fixed from time to time under section 2 of the *Penalty Interest Rates Act 1983* (VIC).

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Breach means an actual, probable or reasonably suspected corruption, interference or loss, or unauthorised access, use, modification, processing, disclosure or other misuse of Personal Information, including a serious data breach or an Eligible Data Breach within the meaning of the Privacy Law.

Privacy Laws means:

- (a) the Privacy Act, and any codes of conduct, recommendations, directives or orders made or issued under such legislation; and
- (b) any legislation that affects privacy or any Personal Information (including the collection, storage, use or processing of such information) that:
 - (i) applies to auDA or the Registrar; or
 - (ii) auDA notifies the Registrar is a “Privacy Law” for the purposes of this Agreement.

Published Policies means any written rules, guidelines, policies, procedures and standards, established and published by auDA from time to time at <https://www.ada.org.au/policies> in accordance with its constitution, that are relevant to the provision of Registrar Services, including the:

- (a) Licensing Rules;
- (b) Registrar Rules;
- (c) .au Dispute Resolution Policy; and
- (d) Registrar Accreditation Policy.

Receiving Party means the party to whom Information is disclosed or who possesses or otherwise acquires Information belonging or relating to a Disclosing Party.

Rectification Notice has the meaning given in clause 32.1.

Registrant means the holder of, or an applicant for, a Licence (or any agent of such holder or applicant), as recorded in the Registry Data at the relevant time.

Registrant Data means the data in respect of a Registrant which the Registrar is required to submit to the Registry under clause 9 and which is maintained on the Registry.

Registrar Equipment means any hardware, equipment, machinery components, instruments or accessories owned or used by the Registrar.

Registrar Facilities means any applications, services, network connections or communications together with any relevant documentation used by the Registrar.

Registrar of Record means the registrar recorded as the registrar for a Licence in the WHOIS Data.

Registrar Rules means the document titled ".au Domain Administration Rules: Registrar", available at <https://www.auda.org.au/policies>, as ratified by auDA and amended from time to time.

Registrar Services means any and all services to be provided by the Registrar in respect of Registry Data, .au ccTLD and any other Designated Namespaces as prescribed, or otherwise authorised, by auDA under the terms of this Agreement, which includes the following:

- (a) applying to the Registry for Licences in respect of Designated Namespaces on behalf of a person;
- (b) providing all associated services to Registrants, including services related to the maintenance, delegation, creation, transfer, modification, renewal and cancellation of Licences or Licence Agreements and the administrative management of all related Information (including Registrant details);
- (c) checking and validating all Information provided for Registrants and Licence Applications to ensure such applicants and applications comply with, and satisfy, all relevant criteria prescribed in this Agreement, the Licensing Rules and other Published Policies; and
- (d) any other services, reasonably required, or contemplated, by the Published Policies in order to assist with, and provide for, the efficient management of the .au ccTLD in accordance with this Agreement.

Registrar Systems means the Registrar Equipment, the Registrar Facilities and any operating system or any permanent replacement equipment.

Registry means a database comprised of the Registry Data about one or more Licences within the .au ccTLD that is used to generate either DNS resource records that are published authoritatively or responses to domain name availability lookup requests or WHOIS queries, for some or all of those Licences.

Registry Access Protocol means the protocol used to create, modify or delete Domain Name registrations, as set out in the *Registry Services Description* published by auDA at <https://www.auda.org.au/industry/au-registry> from time to time.

Registry Connection means a connection to the Registry as part of the Registrar's auDA Accreditation and accessed via EPP or any web administrative tool.

Registry Data means all data maintained in electronic form in the Registry, as defined in section 1.4 of the Licensing Rules, including data related to:

- (a) Zone Files;
- (b) WHOIS;
- (c) Registrant Data;
- (d) technical and administrative contact Information;
- (e) all other data submitted by registrars in electronic form; and
- (f) any other data concerning particular registrations or nameservers maintained in electronic form in the Registry.

Registry Operator means the person or entity that is accredited or licensed by auDA to maintain and operate the Registry or to provide Registry Services in relation to the Registry from time to time, which as at the date of this Agreement is Identity Digital Australia Pty Ltd ABN 76 623 428 384.

Registry Services means the registry services provided by the Registry Operator in respect of:

- (a) the Designated Namespace, registration services, authoritative nameserver services, WHOIS registration data directory services, support services, reporting and logging services;
- (b) ancillary services, functions and activities reasonably necessary to perform these activities; and
- (c) any new or additional services agreed between auDA and the Registry Operator from time to time.

Registry-Registrar Agreement has the meaning given to that term in clause 11.2.

Regulatory Authority means:

- (a) any Government Agency; or
- (b) any independent authority invested with responsibility under an applicable Law.

Rejected Application has the meaning given in clause 6.3(b)(i).

Related Entity has the meaning given in the Corporations Act.

Relative has the meaning given in the Corporations Act.

Reliable and Independent Electronic Data has the meaning given in the Registrar Rules.

Required Policies means the insurance policies set out in Schedule 1 (Particulars).

Security Audit has the meaning given to that term in clause 15.1.

Security Breach means an incident, including any unauthorised, unlawful or dishonest conduct or activities relating to the Registrar Services or the Registry Data, resulting in loss or unauthorised access to data, applications, networks, software and systems or otherwise affecting the Registrar or any part of its systems, including misuse, interference, loss, deletion, corruption, unauthorised access, destruction, modification or disclosure relating to the Registrar Systems, Registrar Services or the Registry Data, and including any breach of the Registrar's security measures.

Security Contact has the meaning given to that term in clause 14.8(a) and refers to the contacts set out in Schedule 1 (Particulars).

Security Event means:

- (a) a Category 1 Incident;
- (b) a Category 2 Incident; or
- (c) a Category 3 Incident.

Security Weakness means a flaw or vulnerability of any kind in the security controls or other measures used to protect the Registry Data, the Registry or the Registrar Services.

SOCI Act means the *Security of Critical Infrastructure Act 2018* (Cth) and any Subordinate Legislation, including the Security of Critical Infrastructure (Critical infrastructure risk management program) Rules (LIN 23/006) 2023 and the Security of Critical Infrastructure (Definitions) Rules (LIN 21/039) 2021, each as amended from time to time.

SOCI Government Authority means the Department of Home Affairs, a relevant Commonwealth regulator, and any other Government Authority that has functions relating to the security of a critical infrastructure asset under the SOCI Act.

Software means all software, computer programs and systems used in the provision of the Registrar Services, including programming, (including Source Code, object code and microcode) middleware, sub system software, operating systems, database management systems, system utilities and all software tools, methodology, associated documentation and media on which software is stored.

Source Code means:

- (a) computer programs expressed in a source language or form which can be interpreted or compiled and then executed by a computer as commands; and
- (b) all documentation and tools reasonably required to enable a person familiar with computer programming to read, understand and modify such computer programs.

Special Licensing Terms means any terms set out in Item 1 of Schedule 1 (Particulars).

Step-in Event means the occurrence of any one or more of the following:

- (a) the Registrar commits a breach of this Agreement which, in the reasonable opinion of auDA can, does or will have a materially adverse effect on the security, integrity or stability of the DNS or the Registry;
- (b) an Event of Default in relation to the Registrar;
- (c) auDA becomes entitled to direct the Registry Operator to suspend the Registrar's access to the Registry pursuant to clause 12;
- (d) the Registrar terminates this Agreement in accordance with clause 33.6;
- (e) auDA becomes entitled to terminate this Agreement in accordance with clause 33.7; or
- (f) a Force Majeure Event occurs affecting the ability of the Registrar to perform its obligations under this Agreement.

Step-in Rights means auDA's rights, in accordance with clause 22, to step-in and take control of the provision of all or any part of the Registrar Services on or after the occurrence of a Step-in Event.

Sub-contractor has the meaning given in clause 21.1(a), and includes any person appointed by the Registrar to provide or undertake some or all of the Registrar Services, on behalf of the Registrar, in accordance with the terms of this Agreement

Sub-contractor Agreement has the meaning given in clause 21.2.

Term means the Initial Term together with any Further Term.

Third Party means a person who is not a party to this Agreement.

Top Level Domain means the highest level in the hierarchical DNS on the internet, which in Australia means the .au country code, and **TLD** has a corresponding meaning.

Validation Plan means the plan prepared, maintained and implemented by the Registrar to validate:

- (a) the identity of a Registrant; and

(b) that the Registrant has an Australian Presence,
as contemplated by clause 6.2.

WHOIS means the public service that allows Internet users to retrieve the WHOIS Data associated with a Licence that:

- (a) includes the data sets in the data fields set out in Schedule D of the .au Domain Administration Rules: Licensing (<https://www.auda.org.au/policies>);
- (b) can be retrieved via several protocols including the port-43 WHOIS Protocol (RFC 3912), and the Web-based interface (<https://whois.auda.org.au/>);
- (c) is made publicly available at <https://whois.auDA.org.au/>; and
- (d) includes the RDAP Based Public WHOIS Service when developed as contemplated by this Agreement.

WHOIS Data means the data of the Designated Namespaces which are made available to the public through a public WHOIS Service provided by the Registry Operator. The WHOIS Data fields are specified in Schedule D of the Licensing Rules.

Zone File means a data file that contains the mapping between each Licence in the Designated Namespace and the names and Internet Protocol addresses of computers that can resolve sub-domains of the Domain Name to physical internet addresses.

2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) any consents or approvals required on the part of auDA may be provided or withheld at auDA's absolute discretion, or provided with any conditions auDA considers appropriate;
- (c) headings are used for convenience only and do not affect the interpretation of this Agreement;
- (d) where a word or phrase is specifically defined, other parts of speech or grammatical forms of that word or phrase have a corresponding meaning;
- (e) a reference to a document is to that document as amended, novated, supplemented, extended or restated from time to time;
- (f) a reference to a party is to a party to this Agreement and includes that party's executors, administrators, successors, permitted assigns and permitted substitutes;
- (g) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (h) "person" includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority, and any other body or entity whether incorporated or not;
- (i) "month" means calendar month and "year" means 12 consecutive months
- (j) a reference to all or any part of a statute, rule, regulation or ordinance (statute) is to that statute as amended, consolidated, re-enacted or replaced from time to time;

- (k) a reference to an Australian Standard or International standard or protocol is a reference to that standard or protocol (even if obsolete) or, if replaced, any replacement of it;
- (l) a reference to a thing (including a right) includes a part of it, but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) "include", "for example" and any similar expressions are not used, and must not be interpreted, as words of limitation;
- (n) references to "in good faith" mean promptly, honestly and not perversely, capriciously or irrationally, but do not mean that a person is under a fiduciary obligation or is required to act in the interests of the other party;
- (o) money amounts are stated in Australian currency unless otherwise specified;
- (p) a reference to a time of day is to that time in Melbourne, Victoria;
- (q) a reference to any agency or body that ceases to exist, is reconstituted, renamed or replaced, or has its powers or functions removed (**defunct body**) is to the agency or body that performs most closely the powers or functions of the defunct body;
- (r) no provision of this Agreement will be construed adversely to a party on the ground that the party was responsible for the preparation of this Agreement or that provision;
- (s) any provision in this Agreement which is in favour of more than one person benefits all of them jointly and each of them severally; and
- (t) any provision in this Agreement which binds more than one person binds all of them jointly and each of them severally.

Schedule 6 Notification of Security Events

1 Notification of Security Events

- (a) Where the Registrar becomes aware of, is given information that indicates, or suspects a Security Event relating to the Registrar Systems, Registrar Services or Registry Data, the Registrar must:
- (i) notify the auDA Security Contact (**Initial Notification**) in writing; and
 - (ii) provide a follow-up, written report to the auDA Security Contact (**Security Event Report**), in accordance with the following timing requirements:

Type of Security Event	Timing for Initial Notification	Timing for Security Event Report
Category 1 Incidents	Initial Notification to be provided immediately, and in any event within 9 hours upon becoming aware of, being given information that indicates or suspecting a Category 1 Incident.	Security Event Report to be provided within 36 hours of providing the Initial Notification.
Category 2 Incidents	Initial Notification to be provided within 54 hours upon becoming aware of, being given information that indicates or suspecting a Category 2 Incident.	Security Event Report to be provided within 36 hours of providing the Initial Notification.
Category 3 Incidents	Initial Notification to be provided within 54 hours upon becoming aware of, being given information that indicates or suspecting a Category 3 Incident.	Security Event Report to be provided within 7 days of the Initial Notification.

2 Obligations on Registrar

The Registrar must:

- (a) in relation to Category 1 Incidents and Category 2 Incidents that relate to a Critical Domain Name System Asset, comply with its obligations in Schedule 7 (SOCl compliance);
- (b) in relation to Category 3 Incidents that relate to a Critical Domain Name System Asset and to the extent permitted by Law,
 - (i) not disclose to any Third Party (including any Government Authority) the existence or circumstances surrounding any Security Events without the prior written approval of auDA; and
 - (ii) allow auDA to deal exclusively with any Third Party (including any Government Authority) in relation to any disclosures relating to the Security Event;
- (c) immediately take all action:
 - (i) necessary to eliminate or minimise the impact of such Security Event; and

- (ii) designed to prevent any repeat of such Security Event in the future; and
 - (d) retain evidence and logs regarding the Security Event to help in determining cause, damage and likely source.
-

3 Form of Security Event Report

Security Event Reports must be provided in writing in any form approved by auDA and, at a minimum, unless otherwise specified by auDA, must detail:

- (a) the root cause analysis of the Security Event; and
- (b) any action taken or being taken by the Registrar in accordance with clause 2 of this Schedule 6 (Notification of Security Events).

Schedule 7 SOCI compliance

1 Definitions

Capitalised terms used in this Schedule 7 (SOCi compliance) that are not defined in this Agreement have the meaning given to those terms in the SOCi Act.

2 Responsibility for the Critical Domain Name System Asset

- (a) The parties acknowledge and agree that, under the SOCi Act:
- (i) auDA is the responsible entity for the Critical Domain Name System Asset and the sole legal and beneficial owner of, and therefore the direct interest holder in relation to, the assets described in paragraphs (a) and (b) of the definition of Critical Domain Name System Asset;
 - (ii) auDA is the responsible entity and the legal and beneficial owner of, and therefore direct interest holder in relation to, the a.au DNS nameserver infrastructure that is one of the DNS name servers described in paragraphs (c) and (d) of the definition of Critical Domain Name System Asset, and
 - (iii) the Registry Operator (and its subcontractors) will be the legal and beneficial owners of, and therefore direct interest holders in relation to, the other DNS name servers described in paragraphs (c) and (d) of the definition of Critical Domain Name System Asset.
- (b) The Registrar acknowledges and agrees that, unless otherwise agreed or directed by auDA in writing, auDA will be responsible for managing and handling all communication and engagement with SOCi Government Authorities in relation to the Critical Domain Name System Asset.
- (c) Unless prohibited by Law, the Registrar must:
- (i) immediately notify auDA if it receives any notices, directions or requests under the SOCi Act, or is otherwise contacted directly by a SOCi Government Authority, in relation to the Critical Domain Name System Asset; and
 - (ii) not correspond, communicate or otherwise engage with any SOCi Government Authority in relation to the Critical Domain Name System Asset, including in response to any contact from a SOCi Government Authority as contemplated in paragraph (i) above, without obtaining auDA's prior written consent (not to be unreasonably withheld).
- (d) Without limiting the restrictions in paragraphs 2(b) and 2(c)(ii) of this Schedule 7 (SOCi compliance), the Registrar must:
- (i) consult with auDA;
 - (ii) comply with auDA's reasonable directions; and
 - (iii) copy auDA on all written communications,

in relation to any correspondence, communication or engagement with a SOCI Government Authority in relation to the Critical Domain Name System Asset.

3 Requirement to comply with the SOCI Act

The Registrar must:

- (a) provide, within the timeframes and in the form or format requested by auDA, all reasonable support, cooperation or assistance (including the provision of any information or documents from it or its subcontractors) requested by auDA to enable or assist auDA to:
 - (i) comply with its obligations and requirements under the SOCI Act; or
 - (ii) exercise, perform or otherwise discharge its rights, powers, functions or obligations under the SOCI Act;
 - (b) comply with its obligations under Schedule 6 (Notification of Security Events);
 - (c) promptly notify auDA if it becomes aware that any information previously provided by it or its subcontractors to auDA or a SOCI Government Authority, including Operational Information, is or has become incorrect or incomplete and provide such information as required to ensure its correctness or completeness (as applicable);
 - (d) only make a record of, use or disclose Protected Information for the purposes of performing its obligations under this Agreement (including disclosing Protected Information to auDA);
 - (e) in performing its obligations or exercising its rights under the Agreement, not do (or refrain from doing) or cause anything to be done (or refrained from being done) that would result in auDA, the Registry Operator, or Registrar breaching the SOCI Act; and
 - (f) ensure that its Personnel comply with the obligations imposed on the Registrar under this Schedule 7 (SOCI compliance) and the SOCI Act.
-

4 Cooperation between parties

Without limiting the Registrar's obligations under clause 3 of this Schedule 7 (SOCI compliance), if auDA requires the support, cooperation or assistance of the Registrar (or its subcontractors) under this Schedule 7 (SOCI compliance), auDA may, if practicable, request that the parties:

- (a) promptly meet to discuss the required support, cooperation or assistance; and
 - (b) work together in good faith to agree the inputs, information and actions required from each party.
-

5 Costs of compliance

Each party bears its own costs and expenses incurred in complying with this Schedule 7 (SOCI compliance) and the SOCI Act.

6 Disclosure of Confidential Information

Despite clause 26 of the Agreement, auDA may disclose any information of or relating to the Registrar or its subcontractors (including any Confidential Information of the Registrar or its subcontractors) to any person or SOCI Government Authority:

- (a) to the extent that auDA is required or authorised to do so under the SOCI Act; or
- (b) in the exercise, performance or discharge by auDA of its rights, powers, functions or obligations under the SOCI Act.

7 Release from Claims

The Registrar releases (and must use reasonable endeavours to ensure that its subcontractors release) auDA from and against any Claim arising out of:

- (a) auDA's exercise of its rights under this Schedule 7 (SOCI compliance);
- (b) auDA's compliance with its obligations under the SOCI Act; or
- (c) the Registrar's compliance with this Schedule 7 (SOCI compliance).

Signing Page

Executed as an agreement.

Signed for and on behalf of **.au Domain Administration Ltd** ACN 079 009 340 by its duly authorised representative:

Signature of authorised representative

(By executing this agreement the representative/agent states that he/she has received no notice that his/her to do so has been revoked)

Name of authorised representative (please print)

/if Registrar is an Australian company/:

Executed by the **Registrar** in accordance with section 127(1) of the *Corporations Act 2001 (Cth)*.

Signature of Director

Signature of Director/Secretary*

*Delete whichever does not apply

Name (please print)

Name (please print)

/if Registrar is a foreign company/:

Executed for and on behalf of the **Registrar** in accordance with its Constitution, by its duly authorised representative:

Signature of authorised representative

(By executing this agreement the representative/agent states that he/she has received no notice that his/her to do so has been revoked)

Name of authorised representative (please print)